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A. D. 1706
J. N. M. R. O. P. W. J.

RESOLUTION
OF
Certain Queries
CONCERNING
SUBMISSION
TO THE
Present Government.

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The QUERIES, concerning

- I. Concerning the Original of Government.
II. What is the Constitution of the Government of England?
III. What Obligation lies on the King by the Coronation-Oath?
IV. What Obligation lies on the Subject by the Oaths of Supremacy, &c.
V. Whether if the King Violate his Oath, and actually Destroys the Ends of it, the Subjects are freed from their Obligation to him?
VI. Whether the King hath Renounced or Defended the Government?
VII. Whether on such Desertion the People, to Preserve themselves from Confusion, may admit Another, and what Method is to be used in such Admission?
VIII. Whether the Settlement now made, is a Lawful Establishment, and such as with a good Conscience may be Submitted to?

By a Divine of the Church of England,
As by Law Establishd.

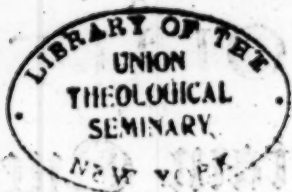
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J. Fraser.

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The INTRODUCTION.

THERE is no doubt but the imputation of Disloyalty will, as the Viper that came out of the fire and fastened upon St. Paul's Hand, be fixed on the Church of England from the Dissenters of all sorts; The Clamour is already very loud, Where is the Loyalty of the Church of England? Which though ad homines it might well be Answered, by demanding, Where is the Loyalty of the Papists? Whom the King had so far obliged, as to put them into the most considerable Offices of the Nation, excluding better Subjects; yet none of them, though they were well Armed, and in great numbers, ever struck a stroke to defend the King against the Assailants, although by their mischievous Counsels they had reduced him to those unhappy Circumstances. And the other Dissenters, who pretended to be great numbers, and to have so great a Zeal for His Majesty, for the favours granted them by the Indulgence, and share in the Government, as with their Lives and Fortunes to assist him, yet were most forward to unite against him. But what have the Clergy done, to incur the Note of Disloyalty? Did they enter into an Association against the King? Were they called in Convocation to declare their Judgments as to the present juncture of Affairs? Did they not as long as the King remained in his Kingdom obey him in all things Lawful, according to their Doctrine of Non-resistance and Passive Obedience? It could not be expected that they should take Arms, or expose their naked Bodies to the Invaders Sword. They kept their Stations, as their Duties to God and the King obliged them, committing themselves to God, and waiting for his Salvation. And methinks when the Bishops and Clergy were accused for Disloyalty by some for not obeying the King in reading his late Declaration for Liberty of Conscience, which they could not do with a good Conscience, and were generally applauded for such Refusal, they should not now be decried for keeping to the same Rule, of not doing such things, for which their Consciences (till better informed)

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will condemn them. But we are now brought into a great strait, in which our Adversaries will by all Arts imaginable endeavour to keep us; and which way soever we turn, they will turn it to our Ruin, if it be possible. If we comply with the present Establishment, they will rob us of our Reputation and Faithfulness towards the People committed to our Charge, as if we had misled them, and taught them those Doctrines, which we our selves never intended to practice. If we comply not, they judge us Men worthy to be deprived of our Livelihoods, and with our Families to be exposed, as in the late War, to Sequestrators, and new Committees: These are no groundless Jealousies, but real Fears, and in some degree matters of Fact; for almost in every Parish there are Persons of different Persuasions, and if the Minister pray for the present King and Queen, according to Order, one part of the Mob will condemn him for an Apostate from his own Doctrine, and a Rebel. If we keep to our Liturgy, which by Oath we are bound to do, (and tho' we have as yet no Order regularly transmitted to us for altering any of those Prayers) there is another Party threaten to knock us on the heads, and great Affronts have been offered to several Conscientious Ministers on both these occasions. What then shall we do to extricate our selves from these Mazes, which are daily enlarged, and become more dark and difficult; for 'tis not the case of a few Bishops or private Ministers only, but the case of the Church of England, which if our Enemies can divide in this, they will easily destroy us, and not us only; but the whole Interest of the Protestant Churches abroad, whose welfare much depends upon our Union and Agreement in this Nation. It therefore concerns us all seriously and sincerely to enquire after the due measures of Obedience to our present Governors, that doing our Duties according to the Commands of God, and the Dictates of a well-inform'd Conscience, we may stop the mouths of such as are opened against us, and ready to swallow us up. I shall at present only consider

*The Objection against the Church of England, which is,
That*

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That she hath Deserted the King contrary to her Oaths, her own Doctrine for Passive Obedience, and their Declaration for Non-resistance, (viz.) That it is not Lawful on any Pretence whatsoever, &c.

Answer, 1. *That the Doctrine of the Church, as to the present Juncture, is not known but by their Determinations in a Convocation duly called : for what some of the Clergy do act or declare, is not to be imputed to the Church. In the War raised against Charles the First, some of the Clergy, as Sibthorp and Manwaring stretched the Prerogative too high, others, as Marshall and Calamy (all which pretended to be of the Church of England) depressed it as low : But neither of these Extremities could be charged on the Church which kept in a middle way. And under the late King some were of the same Opinion with Sibthorp and Manwaring, as the Bishops of Chester and Oxford ; others refused to comply so far as to publish his Declaration : what the Church would have done in Convocation, is a Non constat.*

2ly, *As to the Doctrines of Non-resistance and Passive Obedience, which were not so generally taught ; but others did declare, That those general Rules might admit of just Exceptions, and had certain tacite Conditions and Qualifications in them, which in case of great alterations in the Affairs of Government, would appear to be necessary and justifiable ; and they suppose that if such a case as ours now is, had been thought of, or proposed, it would certainly be excepted or provided against. And they think it fit that the condition and circumstances of the Times wherein such Doctrines were published, ought to be considered, for from the Reign of Q. Elizabeth we lived under Protestant Princes governing by Laws, and Defenders of our Faith, who though they erred from the Laws and the Honour of the Church in some lesser matters, as the necessity of their Affairs and Counsels perswaded them, yet as to the Fundamentals of both Laws and Religion, they resolutely adhered to them ; yet was there in the People such a ferment of Rebellion infused by*
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Malecontents perswading them of great danger both to their Religion and Laws, that the People were alway ready to take fire from the sparks of groundless Fears and Jealousies, and at last broke forth into such a flame as well nigh turned the whole Nation into Asbes: and this was done against a Prince who as much abhorred Tyranny and Popery, as any of his Subjects could; it was therefore necessary that when after twenty Tears Confusion we were brought (as by a Miracle) to settle on our first Foundations, the strictest Rules and Doctrines for Obedience should be inculcated to the People. Thus by an ἀνίστα τῆς ἀνδραλίας when a Stick is crooked we bend it to the contrary part to bring it strait; and the Rule is generally approved, Iniquum petas ut æquum feras; To demand more than is due, that we may not receive less. It is observed by Dr. Barrow, that both Moral and Political Aphorisms (the delivered in general Terms) do need Expositions, and admit Exceptions, else they would clasp with Reason and Experience: The best Masters of such Wisdom interdict things apart, by unseasonable or excessive use to be perverted, in general forms of Speech, leaving the Restrictions which the case may require or bear, to be made by the Hearers or Interpreters discretion. whence many seemingly formal Prohibitions are to be received only as sober Cautions. So far that Learned Doctor. So Bishop Usher's Sentences delivered in general terms are not always intended to be taken in their full latitude, but to have their commodious restrictions according to the quality and nature of the matter in hand, P. 5. of the Power of Princes. And in dangerous Causes, Abundans cautela non nocet, which may serve as a reason for our pressing the Duties of Non-resistance and Passive Obedience in such dangerous times as we lived in, in such general terms. And if we should collect all that the ancient Fathers have said in the heat of Controversies and Disputations, or in their Panegericks and Invectives, and compare them with their Dogmata or Opinions, when they wrote their mature Judgments of matters of Faith and Doctrine,

See his Sermon
on Eph. 5. 4.

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Doctrine, we might find them to contradict themselves more then the present Church doth contradict herself in these Doctrines of Non-resistance and Passive Obedience. Thus for instance, St. Augustine disputing against the Pelagians, who defended Free-will, wrote as if he had been a Manichee, and defended an irresistible Fate; and when he disputed against the Manichees he seemed to be a Pelagian, and to defend Free-will. And those who are Predestinarians in their Writings, in their Sermons to the People, agree with the Arminians: And the Church of England, which ever since the Reformation taught the Doctrine of Non-resistance in any case whatsoever, have yet manifested their Judgment, that this general Rule may in some cases admit exception, as by the Assistance given to the Scots, French, and Dutch Protestants in defence of their Religion and Liberties, as hereafter mentioned may appear. God himself reversed the Sentence denounced in general terms against the Ninevites upon their performing of the tacite Condition of returning from their evil Ways, and yet there was no variableness in God: And if there be any such tacite Conditions in the Laws and Declarations of Men, (as is confest by many wise and good men) the sence of such Law and Declarations may differ from the letter when the state of Affairs doth alter; for if it had been foreseen that a King should arise that would exercise Arbitrary Power, and subject the Kingdom to the Pope, destroy the Religion and Properties of the Subjects (a case so odious and improbable that it could not well be supposed) the Doctrine of Non-resistance and Passive Obedience would not have been press'd to those ends (which were intended to the contrary,) viz. to make way for Popery, and Tyranny, and Confusion. Tempora mutantur non nos; We adhere to our first Principles still, for, Levitas non est destituere si aliquid novi intervenerit eadem mihi Omnia præsta, & idem Sum.

3ly, But as to matter of Fact, let it be inquired what have the Clergy acted contrary to those Doctrines: While the King continued in the Government, they continued their Obedience,

even

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even when their Liberties and Properties were actually taken away, and their Lives were at stake. Since the King's departure, they have been under restraint, and an impossibility of defending him, whom the Nobility, Gentry, and Commonalty, and his own Army had generally deserted, and joyned with the Invading Army; Hitherto then they have been Passive; but the grand inquiry is, How they ought to behave themselves under the present Circumstances, (the present King in vindication of his Queen's Right, which was otherwise desperate, and not to be recovered by Petition or Bill in Chancery, got full possession of the Kingdom, and by a National Consent in Parliament they are declared King and Queen) Whether our Allegiance be due to the late King, or the present Power under whose Protection we live and enjoy our Religion, Laws, and Liberties which were so near to be lost. Some men of great Reputation for Learning and Piety, think themselves obliged by their former Oaths: And the present Government think they cannot be secure till the Clergy are obliged to them by new Oaths, the refusal whereof may draw on Suspension and Deprivation, to the undoing not only of themselves and Families, but the Established Church at home, and the Protestant Interest over all Christendom, if any Wars or Divisions should be occasioned by such Refusal: for Prevention of which, I earnestly intreat my Brethren of the Clergy to lay aside all Prepossessions and Prejudices, and seriously to consider the Answers given to the following Queries, which the

* St. August. l. 3. Concerning Order says, there are two ways of resolving Doubts, either by our own reason or the authority of the most learned. *Nam qui consiliis pollet nihil ipse, nec audit Sudentis alius, nullus homo vivit in usus.*

Author hath collected from * the Writings of men of great Integrity, Learning, and Experience, partly for his own satisfaction, but mostly for the satisfaction of others whose welfare is as dear to him

as his own, that yeilding due Subjection to the King and Queen, and all that are now in Authority, we may lead a quiet and peaceable Life in all Godliness and Honesty.

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*Violence redress in general
 all since how they ought to and*

The Original of Government in General.

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GOD is the Fountain of all Government, being not the Author of Confusion but of Peace, and hath established Order among all his Creatures; in the Angelical Nature he hath constituted several Orders, Angels and Archangels, Principalities, Powers and Dominions; in the Celestial Bodies, the Sun to rule by Day, and the Moon by Night, and one Star differeth from another Star in glory. And when he made the first man, he gave him dominion over all the works of his hands, he was to rule his Wife, and she to live in subjection to him, and when he became a Father, his Children were to yield him obedience. And when the Families of the Earth were multiplied, so that one Father or Family could not claim Authority over the rest, and considering the great corruption of Nature, it was impossible but Violence and Injustice would be practised, Mankind saw a necessity of setting up one Common Father over many Families, to suppress Violence, redress Injuries, and distribute Justice. To this purpose Mr. *Hooker*, l. 1. c. 10. Two Foundations there are which bear up Publick Societies, the one a natural inclination, whereby all men desire a sociable life and fellowship; the other an order expressly or secretly agreed on touching the manner of their union in living together; for if when there was but one Family in the World, the means of instruction, Humane and Divine, could not prevent shedding of Blood, how could it be but when Families were increased, each providing for it self, strife, contention and violence must grow among them?

To take away such mutual Grievances, Injuries and Wrongs, there was no way but only by growing unto composition and agreement among themselves, by ordaining some kind of Publick Government, and by yielding themselves subject thereunto, that to whom they granted Authority to Rule and Govern, by them the Peace and Tranquillity of the rest might be procured --- No man might in reason take upon him to determine his own right, therefore strife and troubles would be endless, except they gave their common consent to be ordered by some whom they agreed on, without which consent there was no reason one man should take on him to be Lord or Judge over another --- and over a multitude of Families; impossible it is, that any one should have compleat power, but by consent of men, or immediate appointment of God. All publick regiment of what kind so ever, seemeth evidently to have risen from deliberate advice, consultation and composition between men judging it convenient and behoofull. And (the corruption of Nature presupposed) the Law of Nature doth necessarily require some kind of regiment; and man saw, that to live by one man's will, became the cause of all mens misery; this constrained them to come to Laws, wherein all men may see their Duties, and know the Penalties of transgressing them. And tho' wise and good men are fit to make Laws, yet Laws take not their constraining power from those that make them, but from the power which gives them the strength of Laws. And by natural law, the lawful power of making Laws, whereto all Societies are subject, belongs so properly to those entire Societies, that for any Prince or Potentate of what kind so ever, to exercise the same of himself, and not either by express Commission from God, or Authority derived from their consent, upon whose persons they impose Laws, is no better than Tyranny; Laws they are not, which publick approbation hath not made. So far judicious *Hobbes*, in as evident a manner as any demonstration

tion in *Euclid*, to which add that observation of Mr. *Selden*.

Selden de Jure Nat. l. 1. c. 8. p. 106. 'By permission of Nature, it hath been granted, that whatsoever hath been by men joyned in society, limited, forbidden, or constituted, that they are bound to keep, who have so consented, according to the Conditions and Qualifications with which it is prescribed, even as many as have, and as they have given their consent. But whence is it they are so bound? from the Authority of a Deity, (i. e.) of man's Superior, even in those things the rise of the obligation is derived, and therefore from some heads of the obligation of the Law of Nature. *Lod. Vives, on St. Aug. de Civitate Dei, l. 4. c. 5, 6.* takes notice of the first words of *Justin*, (viz.) That in the beginning the rule of Nations was in the hands of Kings, whom not popular ambition, but their moderate carriage, approved by the good, advanced to that height of Honor, on which he gives this comment, That the People elected those Kings to themselves, to be Guides, Governors and Overseers of the Publick Interest, and they were not compelled to take such a one as hapned any way to them, neither did Nobility or the seeking of a party carry it, every man's own private good, with the good of the Publick, was so dear and near to him, that it made him to make choice of none but the best. And it is observable from *Livy* and other Roman Historians, that their five first Kings were chosen by the Senate and People, and that *Tarquinius Superbus* was by them deposed. *Neque enim ad jus regni quisquam præter vim habebat ut qui neq. populi jussu neq. patribus autoribus regnavit*, to which that of *Juvenal* agreeth, speaking of the People, *Satyr 10. Qui dabat olim Imperium fasces legiones omnia*. In our Nation, when the Romans invaded the Land, the People chose *Cassibilane* their King. On the death of *Hardicanute*, the third Danish King, they chose *Edward* the Confessor; and on the death of *William*

the Conqueror, they chose *William Rufus*, and of four that succeeded the Conqueror, not one had the right by nearness of descent.

It is objected against this Opinion of Electing our Governors, That the People, having no power over their own lives, cannot give that power to any other.

Ans. It is not the People that confer this power, but God, who by his Law hath given this power to all supreme Magistrates, *That he that sheddeth man's blood, by man shall his blood be shed.* The People are only a *Medium* of conveying this power of the Magistrate to a particular person, God is the Author of the Magistrates power, to which the punishment of Murtherers is annexed; for the general Rule is, That the Magistrate shall bear the Sword for the punishment of evil doers; and Capital punishment is in some cases just, the People only apply this general Rule, and determine the power to be in such a particular person, for the terror of evil doers; so that though I, being a private person, have no power over my own or another man's life, yet the Magistrate hath by the Institution of his Office from God. *St. Paul, Acts 25. 11.* says as much, *If I have done any thing worthy of death, I refuse not to die.*

The Ordinance of Government is from God and Nature, but the Species of it, whether by one or more, is from Men, and the Rule for administration, is by mutual agreement of the Governor, and those that are to be governed, from whence probably that which by *St. Paul* is called *Θεῶν διαταγή*, God's Ordinance, as to Government in general, is by *St. Peter, 2. 13.* called *ἀνθρώπων διαταγή*, a Humane Constitution, as to the particular Species, for so the Supreme Power is called, whether to the King as Supreme. As for the Patriarchal Constitution, and a Lineal Descent by proximity of Blood, it is so near to an impossibility of finding out the right Heir to the first Father of a People, that we must let that alone for ever. And as for Conquest, *Grotius, l. 1. c. 4.*

§. 16. says, 'He that doth usurp a Government, and afterward enters not into a Compact with the People, (as it is evident *William* the Conqueror did, who also pretended a right prior to his Conquest) nor is there any trust reposed in him, but his possession is maintained by force; the right of War doth in this case still continue, so that it is lawful in all things to deal with him as with an Enemy. And *L. 1. ch. 4. §. 7. N. 3.* It is to be observed, saith *Grotius*, That men did not at first unite in civil Communities by any Command from God, but voluntarily, and from the experience which they had, that private Families were unable to resist any foreign force; from hence grew Civil Power, which *St. Peter* therefore calls a Humane Ordinance, though elsewhere it is called a Divine Ordinance, because God did approve thereof, as suitable and convenient for the good of Mankind, but when God approves of a Humane Law, he must be supposed to do it as Humane, and after a Humane manner.

Concerning the Rise of our Government, which is the Second Query, I shall search no farther than the Reign of *William*, called the Conqueror, who in truth disclaimed that Title, pretending a right to succeed by a Grant from King *Edward*, and an Oath of *Harold*, who swore to preserve the Kingdom for him after the death of *Edward*; King *Edward* being dead, many of the Nobles invited *William* to take the Crown, but *Harold*, contrary to his Oath, assumes it; whereupon he resolves to vindicate his Title by the Sword, the Pope sending him a consecrated Banner, and approving his Title, and shortly after his landing, slays *Harold* in battel, and marching to *London*, is proclaimed King; and crowned by *Aldred*, Arch-bishop, taking the Coronation-Oath, which was enjoined by King *Edward*, and is the same in substance with that which is still administered, and in the Title of his Laws, made in the fourth Year of his Reign,

Reign, he styles himself Heir and Cousin to Edward the Confessor, *Spelman's Councils*, p. 619. and confirmed all St. Edward's Laws. And his Son Henry declares his Father's Title thus, *Qui Edwardo regi Hereditario Jure successit*. Selden ad Eadmerum, p. 211. Henry the First, his Son, abolished the Norman Laws, which his Father added, as Cooke in the Proem to l. 3. of his Reports. Afterwards the Barons threatened King John to seize his Castles, if he would not confirm their Laws, which they did until they got the *Magna Charta*.

It appears then, that our Government is not an Absolute Monarchy, such as that of the *Turks*, and the ancient Emperors of *Rome*, whose Wills declared by Edicts, had the force of Laws, as is evident from, 1. The Manner of Making Laws, the Legislative Power being divided between Prince and People; And, 2. The Mutual Oaths and Obligations that pass between the Prince and People, and because * no Laws oblige the Subject, but what are agreed on by Prince and People in Parliament. 3. Nor can any Money, without their consent, be raised. And whatever Laws have been thus made in former Ages, and stand unrepealed, do respectively oblige both Prince and People in future Ages. So that when Laws are thus made, it is not in the power of Prince or People to annul them, but by the same Authority by which they were made; by which it appears, that the Legislative Power, which is a chief Property of Sovereignty, is not solely in the Prince, yet may he pardon the Persons of some Offenders, and remit the Penalties in some Cases, wherein *Salus Populi Suprema Lex*, which Maxim, as it leaveth in the Prince a power of dispensing with the rigor of the Law, as he shall see it expedient for the publick good, so it leaveth also in the Subject a liberty upon just occasions, (as in cases of great exigency, and for preventing of such hazards and inconveniences as could not be foreseen or prevented,

* *Quas vulgus eligit.*

vented, and might prove of no less consequence to the publick) to do other wise than the Letter of the Law requireth. See *Sunderfon's Cases of the Liturgy*. A. 1708 for which he gives this reason. (*viz.*) *It may well be presumed, that the Law giver, who is bound in all his Laws to intend the safety of the Publick, and of every Member thereof in his due proportion, hath no intention by the observation of any particular Law, to oblige any person who is a member of the Publick to his destruction or ruine, when the common good is not unreasonably promoted thereby.* Upon which ground it is generally resolved by Casuists, that no Constitution (merely humane) can lay such obligation on the Conscience of the Subject, but that he may, according to exigency of circumstances, do otherwise than the Constitution requireth. This leads me to the *Third Query*.

The *Third Query*, which is concerning the Obligation of the Coronation Oath, and the Oaths taken by the Subjects, of which I shall speak jointly, because the Obligations are relative and reciprocal.

There cannot be a more solemn Oath than that which is taken by our Princes at their Coronation, to which the Prince is obliged as to the Matter of it before his Coronation, as well as the Subject is bound to the Prince, who is not uncrowned; the Prince is our natural and liege Lord, as we are his natural and liege Subjects; (*A. e.*) according to Law.

The Oath, as I find it taken by King *Charles First*, of blessed Memory, is this:

Quest. Sir, Will you grant and keep said, by your Oath, confirm to the People of England, the Laws and Customs so to them granted by the Kings of England, your lawful and religious Predecessors, and namely the Laws, Customs, and Privileges granted to the Clergy by your glorious King St. Edward your Predecessor,

decessor, or according to the Laws of God, the true Profession of the Gospel established in this Kingdom, and agreeable to the Prerogative of the Kings thereof, and the ancient Customs of this Realm?

Ans. I grant and promise to keep them.

Q. Sir, Will you keep Peace and Godly Agreement intirely, according to your power, both to God and Holy Church, the Clergy and People?

A. I will keep it.

Q. Sir, Will you, to your power, cause Law, Justice, and Discretion, in Mercy and Truth, to be executed in all your Kingdoms?

A. I will.

Q. Will you grant to hold and keep the Laws and rightful Customs, which the Commonalty of this your Kingdom have; And will you defend and uphold them to the Honour of God, so much as in you lieth?

A. I grant and promise so to do.

Our Lord the King, we beseech you to pandon and grant and preserve to us, and to the Churches committed to our Charge, all Canonical Priviledges, and due Law and Justice. And that you would protect and defend us, as every good King ought to be a Protector and Defender of the Bishops and Churches under his Government.

A. With a willing and devout Heart, I promise and grant my part, and that I will preserve and maintain to you, and the Churches committed to your charge, all Canonical Priviledges, and due Law and Justice, and that I will be your Protector and Defender to my power, by the assistance of God, as every good King in his Kingdom by right ought to protect and defend the Bishops and Churches under his government.

Then the King ariseth, and is led to the Communion Table, where he takes a Solemn Oath, in sight of all the People,

People, to observe the Premises, and laying his Hand on the Book, saith, *The things which I have before promised, I shall perform and keep. So help me God, and the Contents of this Book.* Now an Oath being a high Act of Religion, and called the Oath of God, invoking him as a Witness and Surety for the performance, and a Revenger in case of Transgression; ought not (but as Medicines) to be taken but in cases of Necessity, with good Advice, and great Sincerity, especially in such Solemn and Publick Oaths, the violation whereof the very Heathen do abhor. And what the Laws of the Church and People are, the *Magna Charta*, the *Petition of Right*, and the *Statutes of Parliament* do shew; to all which the Prince is sworn, and thereupon the People declare their acceptance of him, and some Subjects of all Orders do him immediate Homage in the Name of the rest. And by the Laws of God and Men, those things that are Solemnly Sworn to, on expresse Conditions mutually agreed on, do equally oblige both Parties.

The Subjects Obligation is expressed in several Oaths, the most considerable are those of Supremacy and Allegiance; from each of which the Person sworn is under a double Obligation; first and primarily to the matter of the Oath which concerns both Prince and People, which they are sworn to defend: And secondarily, to the Persons specified in the Oath, whose Interest it is to defend the same, (*viz.*) the King, his Heirs and Successors. The Oath of Supremacy was framed to assert the King's Supremacy, in Opposition to the Usurpation of the Pope, wherein we promise, *To bear Faith and true Allegiance to the King, his Heirs and Lawful Successors, and to our power to assist and defend all Jurisdictions, Priviledges, &c. granted or belonging to the King's Highness, his Heirs and Successors, or united and annexed to the Imperial Crown of this Realm.* This Oath was brought into Form by King Henry VIII. And the Parliament then declared, *That it was a Declaration of the Ancient Right of*

the Crown, which doth not at all exclude the Right of the Subject, because the admission of that Usurpation would certainly bring the Subject under the Yoke of *Popery* and *Slavery*, which by this Oath they are bound to their power to resist, as they did in the Reign of King *John*, and several other Kings, of which hereafter.

In the Oath of Allegiance, we swear, *to bear Faith and true Allegiance to His Majesty, his Heirs and Successors; and him and them will defend to the utmost of our Power against all Conspiracies and Attempts whatsoever made against his or their Persons: And do our best endeavour to disclose to His Majesty, his Heirs and Successors, all Treasons and Traiterous Conspiracies, which we shall know or hear of to be against him or any of them. And we also Swear, That neither the Pope of himself, nor by any other means with any other, hath power to Depose the King, or annoy his Countries, or to give License to any of them to bear Arms, to raise Tumults, or to offer any violence or hurt to His Majesties Person, State, or Government, or to any of His Majesties Subjects, within His Majesties Dominions.*

Concerning these Oaths it is observable, First, that they were both intended to preserve the King and his Subjects from the Usurpations of the Pope and Church of *Rome*, contrary to their Ancient Rights, which were opposed and resisted not only by many of our Kings which were themselves Papists, but by the Nobles and Commons when their King would have submitted to them. And if they who were Papists did so resolutely defend themselves against Popish Usurpations of a Pecuniary and Temporal concern, much more ought we, when not only our Liberties, but our whole Religion, as Protestants, is invaded. Secondly, That by these Oaths we are bound to defend them to the utmost of our power against all such as shall offer any Violence or Hurt to His Majesty's Person, State, and Government, or to any of His Majesty's Subjects. Thirdly, Be-
cause

cause it is mentioned in the Oath, that these Privileges were granted or annexed to the Crown, (*viz.*) by the first Constitution, agreed on by Prince and People. Fourthly, Because it is said, that neither the Pope of himself, nor by any other means with any other, (which may infer, although the King himself should joyn with him, as King *Jahn* did) may do violence or hurt to the State and Government, or to any of His Majesty's Subjects; from whence I inferred, that the Subjects were primarily obliged to the matter of the Oath, and then to the King's Person, because the King in Person may joyn with the Pope to do violence and hurt to the Subjects, in which case the Oath binds the Subjects to the utmost of their power to defend and maintain their Rights and Privileges, which for their better Security were granted or annexed to the Crown, not for their utter subversion; and it is incredible that any Prince would oblige his Subjects by Oath, to which he himself hath sworn also, or that he would expect the performance of it from his Subjects, which he himself with all his power is resolved to vacuate and destroy. And in such a case we must recur to the Law and Dictates of Nature for preservation of our selves and the common welfare against unfaithful and cruel Men; for there is such a Law Prior and Paramount to any particular Constitution, and for the end whereof all Government was instituted; this is always accounted *inculpata tutela*, so Natural and Necessary, that it cannot be annulled by any Civil Constitution. *Et qui se cum defendere possit occidi permittit illum damnari posse non aliter ac si seipsum occidisset*, he is a *Felo de se*, guilty of Self-murder. And doubtless if it had been proposed to the Law-makers, whether they intended to oblige themselves to assist and defend the King's Person in case he should joyn with the Pope and French King to set up the Inquisition, and bring in French Dragoons, they would never have enacted such a Law; and therefore we may presume they never intended

such Obligation. Fifthly, That we are bound to preserve them to the King and to his Heirs and Successors, and him and them to defend to the utmost of our power against all Conspiracies and Attempts whatsoever, which shall be made against his or their Persons, their Crown, or Dignity. Supposing then there be an Attempt made to deprive the Heir Apparent of the Right of Succession, there is an Obligation on the Subjects not only to disclose and make it known to such Heir and Successor, but him and them to defend to the utmost of our power. To this purpose Bishop Taylor says, second Vol. p. 137: *Where the right of Succession is in a Family by Law or Time immemorial, no Prince can prejudice his Heir, or the People committed to him, for it cannot without consent be alienated; because Persons cannot be disposed of as Slaves or Beasts; so that in this (and some other cases) the King loseth his Authority, and then the force of the Obligation ceaseth also.* And how good an Opinion the Ancient Clergy and others had of the Peers and People that fought in defence of the *Magna Charta*, and against the Usurpations of the Popes, may appear by the Writers of that and the succeeding Ages concerning *Simon Montfort*. The Chronicle of *Meilrois*, lately Printed by the Bishop of Oxford, p. 231. says, *Occubuit cum multis ex magnatibus Anglicis qui venerant ad bellum ut certarent pro justitiâ Angliæ, cujus post modum Justitiæ infallibile signum fuit crebra miraculorum exhibiti diminutius exhibita circa Hugonem summum Angliæ dispensatorem & Simonem de Montfort, qui occubuerunt pro justitiâ decertantes & idio nonnulli eorum meruerunt à dea miraculorum exhibitionem*, of which Miracles they give divers instances. And long after these Writers, which lived in the time of the Barons Wars, *Polidore Virgil*, who lived in the days of *Henry VIII.* gives this Testimony to *Simon de Montfort*, p. 317. of the *Basil* Edition, *Inbasit hominum mentibus constans opinio hunc (Simonem de Montfort qui ob patriam & jus*
jurant.

jurandum (for it seems they were under the like Oaths) *vitam amisissent interiisse Martyrem id quod & vita sanctitas non patitur negandum, jam tum fueri qui ejus memoriam ut dici cujuspiam colere ceperunt compluresque id fecissent cui Regis iram non perti nuissent.* For if the Prince do evidently violate not only the Coronation-Oath, but act contrary to the tenor of the Oaths of Supremacy and Allegiance, and actually subject the People to that Jurisdiction and Usurpation, against which they are sworn, what is the extent of that Clause in the Oath of Supremacy (*viz.*) *To our power to assist and defend all Jurisdictions, Priviledges, and Authorities granted or belonging to the King's Highness, &c.* Doubtless they that granted them, and by Oath are bound to assist and defend them being granted, may oppose such as attempt the destruction of them, when not only the King's Prerogative, but the Peoples Religion, their Laws, and Liberties are assaulted, and in a way to be utterly ruined. And Treason may be committed against the Government as well as against the King; and also the King's Eldest Son. It is well known how resolutely our Ancestors in the darkest times of Popery (being themselves Papists) did defend the Nation against the Incroachments of the Church of *Rome*, when their Kings would have parted with this Right, which they affirmed he neither could nor should do, and in defence of them they were prodigal of their Lives.

Query. Whether these Premises being undeniable, the Subjects that according to their Oaths did timely endeavour (the case being otherwise desperate) to vindicate as well the Right of the Crown to the King, his Heirs and Successors, as their own Religion and Liberties, did not act according to their Oaths and Duties, not by resisting their Prince, but by defending the Succession and themselves against such Instruments as acted contrary to the tenor of those

those Oaths. If Judges, Juries, &c. had performed in their several places as the Law and their Oaths obliged them, the King might have kept his Throne: We have a Maxim in Law, *That the King can do no wrong*, because he is supposed to do all things by his Ministers, and they to act all according to the Law: But when a King shall choose such Ministers as will act against the Laws, and defend them therein, there cannot be a greater wrong done to the Subject.

5. In Answer to your Fifth Query, which concerns the mutual Obligations between the Prince and the People by virtue of these Oaths and the Declaration hereafter mentioned. It is to be considered (as Bishop *Sanderſon* ſays in the Caſe of the Engagement, p. 90.) *That Allegiance is ſuch a Duty, as every Subject, under what form of Government ſoever, by the Law of Nature oweth to his Country (primarily) and conſequently to the Sovereign Power by which that Commonwealth is governed, (who is Caput Communitatis) as is neceſſary for the preſervation of the whole Body. And ſpeaking of the Obligation of Laws (which will hold alſo in the caſe of Oaths,) That if the intention of the Law-giver ſhould be underſtood preciſely of that particular, actual, and immediate intention of the Law-giver in making a particular Law, it will not hold true in all caſes, but there is to be ſuppoſed in the Law-giver a more general habituate and ultimate intention of a more excellent and tranſcendent Nature than the former, which is to have an influence into and an over-ruling Power over all Laws (viz.) an intention by the Laws to procure and promote the Publick Good.* The former intention bindeth where it is ſubſervient to the latter, or conſiſtent with it, and conſequently bindeth in ordinary Caſes, and in orderly Times. But where the Obſervation of the Law by reaſon of the conjuncture of Circumſtances, or the iniquity of Times (Contingencies, which no Law-giver could

could either certainly fore-see, or if fore-seen, could not sufficiently provide against) would rather be prejudicial than advantageous to the Publick; or is manifestly attended with more inconveniencies and sad consequents to the Observers, than all the imaginable good that can redound to the Publick thereby, can in any reasonable measure countervail; in such case the Law obligeth not but according to the later and more general intention only. Even as in the Operations of Nature, particular Agents do move ordinarily according to the proper and particular inclinations; yet upon some occasions, and to serve the ends and intentions of Universal Nature (for the avoiding of something which Nature abhorreth) they are sometimes carried with motions quite contrary to their particular Natures; as the Air to descend, and the Water to ascend, for the avoiding of vacuity.

Concerning the Coronation-Oath, I shall add here what Bishop Taylor l. 3. p. 144. says, *That a Prince's swearing to govern by Laws is very ancient, of which he gives divers instances, and says, Kings are bound by natural Justice and Equity, without Oaths, to do so, for they are not Kings unless they govern, and they cannot expect Obedience unless they tell the measures by which they will be obeyed; and these measures cannot be any thing but Laws, which are the will of the Prince, which when published to the People then they are Laws. If Kings be not bound to govern the People by Laws, why are they made? By what else can they be governed? By the will of the Prince? The Laws are so, which are published that wise men may walk by them, and that the Prince may not govern as Fools or Lions, by chance or violence, and unreasonable passions, Ea que placuerunt servanda, saith the Law, l. 1. de Pactis. If this had not been the will of the Prince, it had been no Law, but being his will let it be stood to. And p. 143. Whatsoever the Prince hath sworn to, so all that he is obliged not only as a single person,*
but

but as a King, for though he be above the Laws, yet is he not above himself, nor above his Oath, because he is under God, and he cannot dispense with his Oath and Promises in those cases in which he is bound: Although the King be above the Laws, that is, in cases extraordinary, and matters of Penalties, yet is he so under all the Laws of the Kingdom to which he hath sworn, that although he cannot be punished by them, yet he sins if he breaks them. And p. 149. he says, *The Prerogative of Kings is by Law, and Kings are so far above their Laws, as the Laws themselves have given them leave.* And p. 143. *The great Laws of the Kingdom do oblige all Princes, though they be supream: The Laws of the Medes and Persians were above their Princes, as appears in Daniel: And such are the Golden-Bull of the Empire, the Salic and Pragmatical Sanctions in France, the Magna Charta and Petition of Right in England. That great Emperour C. de Legibus l. 4. Digna vox est Majestatis regnantis legibus allegatum se principem profiteri.* A Sentence worthy of the Majesty of a Prince to profess himself tied to his Laws.

Pareto legi quisquis legem Sanxeris, was the wise saying of Pittacus. And the distinction of the Directive Power of the Laws and the coercive, is futile; for a Directive Power is no power, and a Law doth not only direct but oblige.

Thus the Emperour Theodosius, *Tantum mihi licet quantum & leges licet.* Augustine l. 4. c. 4. *De Civitate Dei, Quid sunt Regna nisi magna latrocinia remota justitia que est legum effectus.* The intention of the Coronation-Oath is to oblige the King not to invade the Rights of the Subjects and the Established Clergy; and it is sworn to the Bishops by whom the Oath is administered. And St. Aug. Epist. 225. says, *Expectationem eorum quibus Juratur quisquis decipit non potest non esse perjurus.* Whoever deceives the expectation of him to whom he hath sworn, is guilty of Perjury. It may be said that by the Church and Bishops the

the King might intend such as were of the Roman Communion: but the express letter of the Oath is contrary, (viz.) *With a willing and devout heart I promise and grant that I will preserve and maintain to you, and the Churches committed to your charge, all Canonical Priviledges, and due Law and Justice, and that I will be your Protector to my power, by the assistance of God, &c.* To this Evasion St. Augustine gives a check, *Epist. 224. Quicumque arte verborum quis juret Deus tamen qui Conscientie testis est ita hoc accipit sicut ille cui juratur intelligit*: By whatever art of words any one sweareth, God who is Witness of the Conscience, doth so take it as he to whom he sweareth doth understand it. And Bishop Sanderson blackeneth such a practice with the Sin of Perjury: *Alterum perjuri Genus est ubi recte juraveris non sincero agere sed novo aliquo excogitato commento (salus tamen verbi) vim juramenti declinare & evadere*, Prælet. 6. de Juramento l. 7. Such a practice is contrary to the qualifications of an Oath, *Jer. 4. 2. Thou shalt swear, The Lord liveth in truth, in judgment, and in righteousness*: And in a Prince that so sweareth, the Nations shall bleis themselves, and in him shall they glory: But how can they hope that he will punish Perjury in others, that is guilty of it himself? To this I shall only add what Grotius says l. 2. c. 14. s. 4. *de Jure belli*. That Promises fully made and accepted, do naturally transfer a right, and this holds as well in Kings as in private men. Their Opinions therefore that hold that a King promising without a good cause, is not obliged, are not to be allowed. It was nobly done of Henry the First, when the Pope offered to Absolve him of his Oath, answered, *Who will ever trust another, when they see by my example, that an Absolution can make void the highest Bond of Faith*. See Eadmer's Hist. p. 126.

And where there are mutual Stipulations between Parties, with Conditions expressed, if either Party fail in per-

forming the Condition sworn to on his part, the other Party is not bound to perform what he was sworn to : So Bishop Sanderson, p. 177. *de Jurament.* If Caius swear to give Titius an hundred Pounds on condition that Titius assign to him such a parcel of Ground at a certain day, which Titius refuseth to do, Caius is disobliged.

And p. 216. *De Conf.* A Subject is not ordinarily bound to obey a Law that is very greivous to the certain ruine and destruction of himself and Family, unless some great Necessity or publick Danger do appear. And p. 202, he shews, That when the subject matter of the Oath ceaseth, the Obligation also ceaseth ; as when the state of Affaires between the time of swearing and of performing the Oath is so changed, that if he that swore could have foreseen such a change, he would not have sworn : As if a Father swear never to alter his Will wherein he had made his Son to be his Heir, and afterward his Son attempts to poyson him, the Father may appoint another Heir notwithstanding his Oath ; the reason is because the root of the Obligation, which gave occasion to the Oath being taken away, the Obligation also is taken away. And it is a Maxim in the Civil Law, *Cessante Causa cessat Lex* ; Grotius, l. 2. c. 5. n. 17. thinks no question, but a King by a long continued permission may warrant a People to recover their Liberty on a presumption that the King hath left it to them, *Grot.* l. 12. c. 4. n. 14.

Bishop Andrews gives us these short, but useful Rules concerning Oaths, 1. *If what we swear to, be simply evil, the Rule is, Ne sit Sacramentum pietatis vinculum impietatis.* 2ly, *If it hinder a greater good, then, Ne sit sacramentum pietatis impedimentum pietatis.* 3ly, *If the Oath be simply made, yet it doth Subjacere civili Intellectui* ; as Jer. 18. 7, 8. where God speaks conditionally of plucking up and destroying a Nation, *If that Nation turn from their evil ways, I will repent of the evil, &c.* The Conditions may

may exclude the event, and the Oath remain good; So that if the Prince to whom we swear do wholly pervert the end of the Oath, and require us to act contrary to the ends for which we swear, we are not obliged to obey him contrary to our Oaths.

These things premised, will lead to a full understanding of the Declaration required in the Act for Uniformity, viz. *I do declare that it is not lawful upon any pretence whatsoever, to take Arms against the King, &c. i. e.* This is only a declaration of a Man's private Judgment, according to the best information which he hath at present; nor can any man suppose that the position which is indefinite can reach to every Kingdom, and therefore may be false as to such Kingdoms, (*viz.*) that of *Poland*, where in some cases Resistance is permitted, and in our Nation where the Laws are made the measure of the King's power, because as *Baldus Consil. l. 1. 245.* says, *Clausula de plenitudine potestatis semper intelligenda est de potestate bona & Laudabili.*

24, It may be dubious (or rather out of doubt) because it is possible for a King *exuere Regis personam*, as in case of Resignation, Desertion or great Distraction, such as the late King of *Portugal*, who in his Madness slew divers Subjects; and in such cases Nature dictates that we may *vim vi repellere*, as *David* defended himself against *Saul*. And the Deposing of the King of *Portugal* was approved, as by other Nations, so by the *English* particularly.

So that this Declaration though in general terms, may admit of exception, (as other such Declarations do, as when I declare according to the fourth Commandment, *That it is not lawful to do any manner of work on the Sabbath-day*) yet *Periculum vitæ tollit Sabbathum*, and such

cases of necessity may happen as may make some kind of Work lawful to be done on that day. And it is a good Rule in Law and Equity, that *Omnia dicta quantum vis universalis equitatem admittunt interpretem*: So when I declare according to the Apostle, *That Children ought to obey their Parents in all things*; the exception against things sinful is understood. And if a King in his Lunacy, committing several acts for the Destruction of his innocent Subjects may be restrained, so may such a Prince, *Qui Sobrius ad evertendam rempublicam accedit*; If our Promise confirmed by Oath, be grounded on a condition whereto it related, that condition not being performed, makes the Promise void, *L. 2. c. 13. n. 16. Gr. de J. Belli*. Or if the quality of the person cease, the Oath sworn to that person, in relation to his quality, doth cease also, *L. 2. c. 13. n. 18*. Every Contract though sworn, is to be understood with this reserved condition, That matters continue in the same state, but not if they be changed. *A wise Man, saith Seneca, changeth not his Resolution, all things continuing as they were at the time that he made it; nor can he be said to repent, because at that time no better Counsel could be followed than that he resolved on, L. 2. c. 16. n. 27. Eadem mihi omnia præsta & idem sum.*

3ly, Nor can a man declare it to be a traiterous position in some cases (though he himself do abhor it in other cases) to take up Arms by the King's authority against his person, or against those that are commissioned by him; because such Commissions may be granted to persons that by Law are disabled to take such Commissions, or the Commissions may be forged, as in the late *Irish* Rebellion, or they may be extorted from the King, being under the power of his Enemies, and

in fear of his life; such was the case of *Edward* the 5th, when *Richard* Duke of *Glocester* seized on his Person, raising a War, and granting Commissions in the King's Name. Suppose that his Mother, *Queen Elizabeth*, who had then the Broad Seal brought to her by the then Arch-bishop of *York*, had raised another Army, to free the King from the Usurper's power, could this either justify the Duke and his Party, or condemn the Queen and her Adherents?

And what hath happened, may happen again: As in the Case of *Ireland*, where Commissions are granted to *Papists*, who are unqualified, *Query*, Whether it may not be lawful for the *Protestants* of that Nation to defend by Arms such as by those Commissions assault them, for the destruction of their Religion, Laws, and Liberties? So that notwithstanding this Declaration, if there be Laws and Oaths, and certain contingent Cases, whereof the Subject that makes the Declaration is ignorant, which do allow a defence of the Crown, Religion, Laws, and Liberties; such defence may be lawful, notwithstanding the Declaration, as in case it should happen that the King wholly deserts and renounceth the Government. Which leads me to answer your *Sixth Query*, Whether, it being granted, that the King's being studiously bent on the Alteration and Subversion of the Government established in Church and State, do amount to a Renunciation of the Government?

After that *Grotius* had urged all the Arguments he thought of for Non-resistance, he thought fit to admonish his Reader of something, lest he should think, that he had offended against that Law (of Non-resistance) when indeed he had not, and the Admonitions are these:

First,

First, Such persons as are under compact with the People, if they offend against the Laws, may be restrained by force; And if a King abjure his Kingdom and desert it, all things are lawful against him as against a private person; for which he quotes Barclay, who was the greatest assertor of Monarchy, who says, *If a King alienate his Kingdom, or subjects it to another, he loseth it*; Grotius his words are, *Si Rex reipsa tradere regnum aut subjicere molietur quin ei resisti in hoc possit non dubito nam aliud est periculum aliud habendi modus qui ne mutetur obstatere potest populus id enim sub imperio comprehensum non est. Seneca l. 3. Controvers. Et si parendum in omnibus patri in eo non parendum in quo efficitur ut non sit pater.* And Barclay says, *A Kingdom may be lost, if a King be carried on to the destruction of the People; Consistere enim non potest voluntas imperandi & voluntas perdendi.*

Again, If the King have one part of the Empire, and the People another, the King attempting to destroy the Peoples right, a just force may be opposed, and this (saith he) I think to have place, although it be affirmed, that the power of War (or Militia) is in the King; for that is to be understood of foreign War, for he that hath right, hath power to defend that right. Grotius on Esther 8. 11. concerning the Edict which Mordecai procured for the Jews to defend themselves, says, *Jus naturæ munus autoritate Regiâ*, supposing they might have done it by the Law of Nature.

And on those words of his, *Si Rex hostili animâ*, &c. hath this Note, Jo. Major, in 4 Sentent. says, *Non posse populum à se abdicare potestatem destituendi Principis si in destructionem vergeret.*

So *Bilſon*, p. 520. If a Prince ſubmit his Kingdom to a Foreigner, or change the Form of the Common-weal, or neglecting the Laws eſtabliſhed by common conſent, to execute his own pleaſure, the Lords and Commons may joyne and defend the Laws eſtabliſhed. From whence I argue thus, that Prince who ſtudiouſly altereth the Form and Conſtitution of his Kingdom, as ſuppoſe from a mixed and limited Monarchy, to an abſolute, deſtroys the Species of Government, *qua talis*, and ſo loſeth it ; for the introduction of the new Form, is the deſtruction of the old ; but a King that declares, (and acts accordingly) that he will govern abſolutely, and requires his Subjects to acknowledge his abſolute power, doth *ipſo facto*, deſtroy that Species of a limited Monarchy which he had, therefore he loſeth that Monarchy. And what was acted in *Scotland*, and intended to be acted in *England*, is ſufficiently known, and a full confirmation of this Argument. And 'tis the judgment of *Grotius*, that he that openly in word or deed profeſſeth himſelf an enemy to the whole Nation, (and the major and better part may carry that denomination) is in that very act preſumed to abjure and renounce the Government of it ; for if ſuch a Prince ſhould proceed to execute all his ruining Deſigns, he would leave none of his People over whom he might reign.

To theſe, I ſhall add another Argument, *viz.* That a Prince or People may yield up themſelves to a prevailing power, as the men of *Capua* and *Collatia* did to the *Romans*, and ſo loſt all their authority. And that our King did ſo, may appear by diſbanding his Army on the approach of the preſent King, and ſubmitting himſelf to his Guards: And as King *Agrippa*, ſaid to the *Jews*. *Intempeſtivum eſt nunc libertatem concupiſcere, olim ne ea amitteretur certatum oportuit* ; He ought to have

have defended his Dominion while he had it, it is too late to require what by dedition and dereliction he hath given up.

4. There are in Laws, as well as in Oaths, *Casus omissi*, and tacit exceptions, which the greatest prudence of men could neither foresee, nor sufficiently prevent; nor indeed were it a point of prudence so much as to name them, being things odious, or rarely contingent, as the case of a King's being lunatick, or otherwise incapable of the Administration of his Office, which our Laws have not provided against. Bishop *Sanderson*, p. 41. *De Juramento*, mentioneth these four. *Si Deus permiserit, quoad licet, salva potestate Superioris Rebus sic stantibus*. 1. If God permit, as in the 4th of *St. James*.

So that if *Caius* swears to *Titius*, to pay him at *London*, on the *Calends* of *January*, a Sum of Money which he oweth him, but is at that time confined to his Bed by a grievous Disease, or in his Journey is robbed of his Money by Thieves, in this case he is not guilty of perjury, because *Rei impossibilis nulla est obligatio*, there is no obligation to a thing impossible; and because all things are subject to the Divine Will and Providence: therefore in every Oath, by a Common Law, this Clause is to be understood, unless God shall otherwise dispose. For this he quotes the *Gloss. ad quest. 22. c. 2. B. Paulus*, *In omni voto vel Sacramento intelliguntur hujusmodi generales conditiones si Deus voluerit si vivero si potero*.

2. Another Condition to be understood, is, if it be lawful, because there is no obligation to unlawful things; as if a man swear to observe all the Statutes and Customs of a Corporation, he is bound to observe such only as are lawful and honest.

A 3^d Condition is a *Salvo* to the power of a Superior, as when a Son swears to do a thing that is lawful in it self, but his Father being ignorant of the matter, commands another thing, the doing whereof hinders the Son from performing what he had sworn, the Son is not bound by that Oath, because by the Divine Law, he is bound to obey the command of his Father; the reason is, because the act of one man ought not to prejudice the right of another.

The 4th Condition is, if things continue in the same state wherein they were, as when a man swears to return a Sword that he borrowed, and the person of whom it was borrowed, grows furiously mad, he is not bound to restore it. So *Seneca, l. 4. de Ben. c. 35. Tum fidem fallam si omnia eadem sint me promittente. Si mutantur fidem meam liberat.*

It is highly reasonable to presume, that such cases may happen, which if the Law-givers could have foreseen, they would not have made or pass'd into a Law; and therefore it may be presumed they will not exact obedience to it.

Dr. Sanderson, p. 166. *de Conf. When the Law forbids that to be done, which the Subject cannot omit without sin, or commands that to be done, which he cannot do without sin, such a Law doth not bind; for, 1. Rei illicitæ nulla est obligatio*, as when a Prince commands the Worship of a false God, *Prior obligatio præjudicat posteriori*. The obligation to preserve the Common Welfare is prior to our Allegiance to the present Governor.

Falkner, in his Book of *Christian Loyalty*, speaks as much for the unlawfulness of Subjects taking up Arms against the King as can be said, p. 372, &c. yet p. 542. he proposeth the case, *Whether if a Supreme Governor should, according to his own Pleasure, and contrary to the*

*establiſhed Laws and his Subjects Property, actually engage upon the destroying and ruining a conſiderable part of his People, they might not defend themſelves by taking Arms. And he inſtanceth in the Paris Maſſacre, where about 100000 were ſlain in cold blood, moſt of which were innocent perſons, never accuſed or tried by Law, which he ſays, was ſuch a cruelty as can ſcarce be paralel'd under Mahometiſm; And he grants, that if ever ſuch a caſe ſhould happen, it would have great difficulties, Grotius (ſaith he) thinks, that in this utmoſt extremity, the uſe of ſuch defence, ultimo neceſſitatis præſidio, as a laſt refuge, is not to be condemned, provided the caſe of the common good be preſerved. And he ſeems to grant, that this may be true, upon this ground, (viz.) that ſuch attempts of ruining, do, ipſo facto, include a diſclaiming the governing thoſe perſons as Subjects, (i. e. according to Law) and conſequently of being their Prince or King, and ſo the expreſſions in the Declaration, that it is not lawful on any pretence whatſoever, &c. would be ſecured. Now p. 529. he quotes Barclay, l. 3. c. 16. p. 212. ſaying, that a Prince, ſeeking the ruin of his People, is no longer King. *Se omni dominatu & principatu exiit atque ipſo jure ſive ipſo facto Rex eſſe deſtit;* l. 6. c. 23. With whom he joyns Grotius, l. 1. c. 4. n. 11. *Si Rex vere hoſtili animo in exitium totius populi feratur,* to reſiſt ſuch a one, is not to reſiſt a ſovereign King, but him who ceaſeth to be ſuch, *Conſiſtere ſenul non poſſunt voluntas imperandi & voluntas perdendi quare qui ſe hoſtem totius populi proſtitetur eo ipſe abdicat regnum.* And, p. 531. Falkner ſays, On yielding ſuch ſuppoſitions, (to be true) *I ſhall grant the Answer given to be true.* To this purpoſe ſpeaks Grotius, l. 1. c. 4. §. 7. n. 2. treating of Reſiſtance, *This Law ſeems to depend on the intention of thoſe who firſt entered into Civil Society, from whom**

whom the right of governing is transferr'd. Now if such had been asked, whether they intended to impose a YoaK equal to Death upon all that should resist the Tyrannies of a superior Magistrate, upon any account whatsoever? I know not how they could willingly answer in the affirmative; for what in this case Charity would recommend, that may be received as a Law.

7. But another *Query* is, Whether the King, being destitute of the assistance of his Subjects, leaving the Land in confusion, two Armies being in its bowels, hath vacated the Government, and so it is necessary, that some other, to avoid Anarchy and Confusion, be appointed to succeed? To this I answer, 1. That the King, even before his leaving the Kingdom, had deserted the Government; for it is undeniably affirmed by Civilians, whose practice is agreeable, That *nolle habere*, and *renunciare*, are terms equivalent, as when a man conveyeth an Estate with a Charge and Incumbrance upon it, he that will not accept of the Estate with the Incumbrances and Charge, though he would gladly enjoy the Estate, doth, in the judgment of the Law, and in all Equity, renounce his Title to it; for he must accept it *modo & forma debitis*, or not at all; whence I thus ground my Argument, He that is not willing to hold the Government of *England*, as constituted with certain Limitations and Conditions annexed, doth constructively renounce it. But the late King was not willing to accept or hold the *English* Government as constituted and limited, *Ergo*, the sequel of the *Major* is clear, because *Onus transit cum emolumentis*, and both Law and Equity do preclude a right to the one, without the other; an entrance into the Government, with-

out the observance of the Condition, *modo & forma*, is so far from giving a right to it, that it is a renunciation of it. And the *Minor* is as clear, because it is not possible for a Popish Prince, such as ours was, to be willing to govern the *English* Nation, without one or more Popish Priests, without many Papists in Office, Civil and Military, and without subjection to the Pope of *Rome*, and holding correspondence with him. So that if it should be demanded of the King, (which yet needs not the having sufficiently declared the contrary) whether he would accept of the Government, as by the Laws and Statutes against Papists is provided, his refusal is a renunciation. And of this we have had plain demonstrations: The King declaring to the *Scots*, that he had an Absolute Power, and practising the same in *England*, by entertaining the Pope's *Nuntio*, setting up of Popish Bishops, imprisoning the Protestant Bishops, entertaining Jesuits and Papists in his Privy Council, and chief Offices, Military and Civil, the Charters generally taken away, *Magdalen* Colledge emptied of its Students, to make way for Papists, these were manifest indications of the subversion of the Government; for as *Aristotle*, l. 5. *Polit. n. 112. Tyrannus efficitur qui vi dominatur, Regnum est Imperium voluntate Civium delatum at si quis vel fraude vel violentia Dominatur manifesta Tyrannis est, & l. 3. n. 87. Reges solum volentibus imperant si nolentibus imperatur regnum esse definit.* So that the King having first deserted the People, and lost their affections, and for this and other causes deserted the Kingdom, and left it in confusion, giving order to his General to disband his Army without Pay, many of which were Papists, and known Enemies to the Nation, from whom they feared great mischiefs to themselves; There being also another
Army

Army in the Nation which became successful; it was highly necessary that the Nation to avoid utter ruine, should by their Representatives freely chosen, convene, to consult and agree upon a fit person for the administration of the Government; and whereas the person that headed the prevailing Army, was by good Providence married to the Heir apparent of the Kingdom, if he not only by his own merit in preserving the Crown, which otherwise had been lost, but by Marriage of the right Heir, and with her and the *Kingdom's* consent be chosen to a Consortship in the Administration of the Government, it is no more than what *Necessity* and *Right* did require.

Nor is it more than what was done in the Case of *Henry* the Seventh, who having overthrown *Richard* the Third in Battel, was in a Parliament called by him, acknowledged their King; of which I shall give you the History as related by my Lord *Bacon*, p. 10. of his History, which may serve as a President, to authorize what is now done, and leads me to the *Eighth Quere*, to which I shall answer first Historically, and then Rationally in Justification of the late Proceedings.

The Coronation of *Henry* the Seventh was on the 30th day of *October* 1485, and on *November* the 7th the Parliament met, in which (without respect to his Queen's Title, whose Coronation was deferred till almost two years after, (when danger taught him what to do) he obtained that the Inheritance should rest, remain and be in the King and the Heirs of his Body, not mentioning his right Heirs: so that the Entail seemed rather a personal Favour to him and his Children, than a Disinheriton of the House of *Tork*; and this being obtained, he married the Lady *Elizabeth* on the 18th of

Janua-

January, which was celebrated with greater Triumph and Demonstrations of Joy and Gladness, than either his Entry or Coronation, which the King rather noted than liked; and he shewed himself no very indulgent Husband to her, though she were Beautiful, Gentle and Fruitful. So great an Enemy he was to the House of *York*, that he caused Sir *Will. Stanley*, who had saved his Life, and set the Crown on his head in *Bosworth-field*, to be executed for saying, That if he were sure that young man *Perkin Warbeck* were King *Edward's* Son, he would never bear Arms against him.

This Case seems much more unjustifiable than ours, for here the King and Parliament did not only set the Crown on the head of the Conqueror, but intailed it on his Heirs, without respect to the right Heir, whom he had not yet married, and for ought they knew, never intended; of which his strange carriage towards that good Lady, whom he confined to live with the Queen Dowager, her Mother, in *London*; but he kept *Edward Plantagenet*, the Son and Heir of *George Duke of Clarence*, close Prisoner in the *Tower*, might give the Nation just cause of suspicion, that he intended to Reign by his own Title, as Heir of the House of *Lancaster*, or as Conqueror, without any respect to the Title of the House of *York*; And he intended (with the Lord *Bacon*) that it should be so believed, for to the Act of Parliament he added the Pope's Bull for confirmation.

But in our Case much more Justice, Wisdom, and Moderation did appear; the Title of the right Heir being united to that of our Deliverer, and the Crown intailed on the right Line; the present Administration being by consent, and in the name of the King and Queen, which was not observed in the Case of *Henry* the Seventh; and the consent of the Princes *Anno* being

ing also obtained; who hath now a nearer prospect of the Crown than otherwise she could have hoped for.

Nor is the making of the Convention a Parliament without a President, for in the year 1660, when General Monk had summoned several Members in the like manner, but not so free, there being many of the King's Party excluded, yet they were made a Parliament by the King, notwithstanding any want of the King's Writs, *Anno Car. 2 di, 12^o*.

And as to the Rational Part of the Answer, let it be considered, That a Nation must unavoidably run into Confusion, unless such a means may be used; for suppose the Royal Line should be extinct, there can be no fitter means to settle a Government, than by such a Convention duly chosen, and the Agreement of the Lords Spiritual and Temporal, who want only the Royal Writ to Summon them, and that not being to be had, the Nation may do what is in their power to prevent that Confusion which the King's deserting them, and carrying with him the Broad-seal, leaving two Armies in the midst of the Nation, by reason whereof it might in a short time have been as ill with us, as it is now with our distressed Brethren in *Ireland*, made necessary; and Necessity hath no Law superiour to it.

This therefore may be an Answer to those that object against the too great hast in proceeding to a Settlement, before a Parliament could be regularly called by Writ, for considering the great Destruction of the Nations, and the ill Circumstances wherein this and the Kingdom of *Ireland* were: The delay of a speedy Establishment, might have unsettled us for ever; for the King having either deserted the Government, or being driven from it, and another being fully possessed of

of the Kingdom, the common Safety would soon be destroyed if either the prevailing Power should be resisted, or some person not be admitted for the Administration of Justice, and Prevention of Violence: As when a Ship master forsakes his Ship in a Storm, and his Mate thrusts himself into his Office, to guide the Ship, if the Mariners will not presently obey him, as long as he guides the Ship towards the Harbor, the Ship must likely perish, and the Mariners in it: Or if the right Master should be utterly disabled by Sick-ness or Distracted to perform his Office, may not another assume his Office by consent of the Mariners? 'Tis King James the First's saying, *The King is for the Commonwealth, and not the Commonwealth for the King*: The end is alway accounted more noble than the means. And unless it should be granted, that a King in plenary Possession ought to be acknowledged and obeyed, I cannot see on what ground our Saviour commanded *Tribute to be given to Cæsar*, or the Apostle enjoyned *Subjection to the Higher Power*.

The Powers then in being, being such as usurped on the Senate, and were set up as Emperours by a part of the Souldiary, their best Title being the Approbation of the Senate, *Ex post facto*: The Usurpation of *Julius Cæsar* is too well known to need a Relation; and that could not give a sufficient Title to *Augustus* against the Claim of the Senate: the Argument of our Saviour for paying him Tribute, was, because the Money bore his Image; as also the Money in the days of *Julius Cæsar* bore his, and so may be an argument for paying Tribute to any Prince whose Money is current in a Nation. But this will be more evident by considering who was the Prince in being when the Apostle wrote his Epistle to the *Romans*, which was either *Claudianus*

dius Caesar or *Nero*: and the most credible Historians inform us, that on the death of *Caligula*, the Consuls and Senate advised how they might restore their Commonwealth to its ancient Freedom, taken from them by the *Caesars*; but being too slow in their Resolutions, because of Dissentions among themselves, it hapned in the interim, that *Claudius* having hid himself, being frighted with the news of *Caligula's* death, was discovered by a common Souldier, who knowing him, saluted him Emperour, and led him forth to his fellow-Souldiers, with whom he remained a part of the night, *Minore spe quam fiducia*, saith *Suetonius*, the Consuls and Senate then sitting in the Capitol consulting for their common Liberty, sent for him by the Tribune of the People, to have his Advice therein; the Souldiers and People assembled, desired that one might be forthwith named for their Emperour; on which *Claudius* took courage, and promising Rewards to the Souldiers, being also pittied by the People, who thought him designed to suffer punishment, they saluted him Emperour. *Tacitus* gives alike relation of *Nero* his Successor, *Annal*, l. 12. That *Agrippina* his Mother concealing for a time the death of *Claudius*, kept the Palace Gates shut, and pretended great kindness to *Britannicus* the eldest Son of *Claudius*, until she had contrived to make *Nero* Emperour; and having gotten the *Præfekt* of the Bands then on the Guard to her Party, sends out *Nero*, accompanied by *Burrhus* to the Guards, where while some expected *Britannicus* to follow, the *Præfekt* and Souldiers, to whom Rewards were promised, saluted *Nero* Emperour. Now one of these thus advanced to the Empire, by the Souldiers, was undoubtedly the Emperour then in being, when the Epistle to the *Romans* was written, to whom Obedience

is required for Conscience sake, as to the Ordinance of God ; if it be replied, that the Senate did afterwards confirm them in the Empire, that will not vary the present Case, the present King and Queen being also confirmed by Parliament.

That which hath been said, leads me to consider these Scriptures which seem to confine our Obedience only to the lawful Powers, yet some learned and good men have given such a sence of them as may raise a doubt, whether they speak of a King *de Jure* only, or *de Facto* ; and if of a King *de Jure* only, then of such a one as is a Minister for the publick Good only.

For a right understanding of those Scriptures of the *New Testament* which speak of Obedience to Magistrates, as *Matth. 22. 21. Rom. 13. 1. 1 Peter 2. 13.* We are to consider the occasions of inditing them ; that of our Saviour was occasioned by such as accused him for any Enemy to *Cæsar*, that he would make himself a King, and sought by this question to insnare him, which our Saviour perceiving, he only demands to see a piece of the Money with which they traded ; and finding *Cæsar's* Image on it, conceived him to be the Magistrate then in power, commands to give unto *Cæsar* the things that are *Cæsar's*. Moreover, the Jews having from the beginning been governed by one of their Nation, and, as they boasted, never in Subjection to any other, thought it an Usurpation in any to exercise Dominion over them, which made the *Roman* Power very jealous of them, there being at that time great expectation of a Prince that should Govern the World ; and the frequent Seditions and Rebellions of that Nation against their own and the *Roman Magistrates*, increased these Jealousies ; *Judas of Galilee* having made a great Insurrection, and the Christians be-

being called *Galileans*, were thought to be of the same Spirit.

And as for the *Gentiles* that were converted to Christianity, to which they were invited partly by the Privileges of their Christian Liberty, that they should not be the Servants of Men, and partly by the Apostles Prohibition of going to Law before Unbelievers, some weak, and others licentious as the *Gnosticks*, would acknowledge no Magistrates; and as St. *Chrysostome* observes, some of the *Galileans* would rather die than pay Tribute to the *Romans*. St. *Chrysostome* hath divers observations on this 13 *Romans* very considerable; first he stops the mouths of such as did object, that the Apostle did abase his Christian Brethren, by subjecting them to Earthly Princes, for whom the Kingdom of Heaven was prepared: To this the answer is, That the Apostle did not so much subject them to those Princes as to God, who appointed them. Then he raiseth a question, *Is every Prince then ordained of God?* I say not so, for I speak not now of any Prince, but of the matter itself: for that some should command and others obey, this I call the Ordinance of God; and he explains his meaning by the instance of Marriage, that the Man and Woman are joyned by God, (*i. e.*) Marriage is God's Ordinance; not that all such as cohabit as Man and Wife are joyned by God, but only such as are married according to the Laws of Wedlock: Thus the Apostle doth not say there is no Prince but of God, but there is no Power but of God. And on v. 5, for Conscience sake, he thus comments, ἵνα μὴ διὸς ἀνομιᾶς ᾖ ἐξ ἀγρομην ἀπὸ τῶν ἀνθρώπων; That they might not be ungrateful to their Benefactors. So St. *Chrysostome* from whose Comment we may observe, that although Government be God's Ordinance, yet the person in

Government is not always so; he only is God's Minister, who doth administer the Government for the common Good. 2. That we owe Subjection to the person invested with the Government, who takes care for the publick Welfare, for Conscience sake; (i. e.) as an acknowledgement of the Benefits that we partake of under his Administration of the Government: Nor doth it appear, that our Saviour, *Mat. 22. 21.* did determine that *Cæsar* was the Supreme Power *de Jure*; for if in a private case he refused to decide a controverted right, *Who made me a Judge or Divider over you?* *Luke 12. 14.* much less is it probable that he intended to determine such a publick case. And that the Apostle had no other respect but to the person in possession of the present Power, may be doubted from what followeth:

As for the Observation of some Criticks, that the word *ἐξουία* is constantly used for a Person in Lawful Authority, we find it otherwise; for St. *Luke*, speaking of the power of darkness, (i. e.) the Devil, *Luke 22. 53.* his words are *ἡ ἐξουία τοῦ σατάν* (i. e.) the power of the Devil. Nor could the Devil derive a Lawful Authority, as he could, if this word would bear it, when speaking of the Kingdom of the World, he saith, *Τὸ αὐτὸν τὴν ἐξουίαν τὴν αἰώνιον ἀποδοῦναι* all this power will I give thee; as if he had power to set up an universal Emperor over the World. And St. *Luke* is observed to have written most exactly agreeable to the Greek Idium of any of the Evangelists. So that it cannot be inferred from this Scripture, that the Persons then in Power were rightful Magistrates. *Grotius de Jure Belli*, P. 93. c. 4. § 20. *In re controversa Judicium sibi privatus sumere non debet sed possessionem sequi sic tributum solvi Cæsari Christus jubet, Matth. 22. 20. quia in possessione*

seffrone erat Imperiū & nimis ejus habuit imaginem: From whence it followeth in the judgment of *Gratius*, that our Saviour's Command to pay Tribute to *Cæsar*, was grounded on his being in possession of the Empire. And if this be so, as I cannot from the Command of our Saviour, *Matth. 22.* or from *Rom. 13.* see any Reason to the contrary, it will follow, that it is our Duty in *licitis & honestis* to yield Obedience to the present Powers. *Michael Salon*, an eminent School-man, is of the same Opinion, *That the Romans possessed Judea by Tyranny, when our Saviour enjoyed the paying of Tribute, Q. 60. Art. 6. de justitiā & Jure;* where yet he affirms, *That the Catholicks of England were bound to obey the just Laws of Queen Elizabeth, whom he calls an impious Woman.* Besides, I think it will be a very difficult Task for any Man to shew where the word *regna* is applyed to any Person that is out of the Possession of the Power, seeing it ordinarily signifieth the Person that is actually in possession of the Power. For thus the Apostle speaks of the Powers that are in being, *Talis utriusque regis,* and to them he says we must be subject, not only for fear of wrath, which implyeth that we ought to prevent our Ruin, to obey the Power that is in possession. But then the Question is, how this obligeth the Conscience, when the Subject is formerly obliged to a Prince *de Jure*? Now the Rule for directing Conscience, is the Word of God, and if that do enjoyn Obedience to the Prince in possession, the Subject may safely yield it, and ought to do it for Conscience-sake. *Puffendorf* is of the same judgment, p. 1009. *de Jure Gentium;* where he says, *That the Senate and People of Rome were deprived of their Ancient Right through fear or want of strength, not by approving the Dominion of the Cæsars.* (So *Emanuel Thesaurus* says, that

that the People of *Rome* under *Tiberius*, did *tempore ferare non Regi.*) And it is well known (says he) by what means the ancient *Cæsars* invaded the Empire; yet *St. Paul, Rom. 13.* attributes *Æsias* Authority to them to whom Obedience is to be yielded for Conscience-sake, as our Saviour also Commands to give unto *Cæsar* the things that are *Cæsar's*. On which occasion also he mentioneth that Statute of *Henry VII.* which indemnifieth those Subjects which acted under the King in being. And he adds a Sentence from *Nicetas Choniates, nec Imperatorem qui absit querendum, nec qui adsit pellendum esse.* So that I think the Cases in the 22 of *Matth.* and *Rom. 13.* may satisfie Conscience as to our present case; for if those *Cæsars* who were then in Possession, were to be obeyed for Conscience-sake, even then when the Right did belong to the Senate, then we may also obey the King now in being, tho' there be another to whom it is supposed the Right of Government doth belong, without wounding our Consciences.

Now if the present Power be God's Ordinance, we must obey for Conscience's sake; for if we believe that God hath an over-ruling Providence in the Government of the World, to set up one, and pull down another, though we see not a Reason of the Alterations that are made, yet we must believe that there are great and just causes, and such as are directed to good ends, especially where it appears that God by such Revolutions brings Order out of Confusion; and the changes that are made, are effected more visibly by the Counsel of God, than Conduct of Man. Another Rule of Conscience is the Glory of God, that which tends most to the advancing of God's prescribed Worship, the purity of his Ordinances, a sound Faith, and holy Life, we may

may with a good Conscience submit to. It is a saying of *Polycarp*, when he was near his Martyrdom, *We owe all due Obedience to Princes and Potentates, yet not so as thereby to endanger our eternal Salvation.* The Law of Charity is another Rule of Conscience, which as it obligeth us to do good unto all men, so more especially to them that are of the household of Faith, for whom we should lay down our very lives, that we may prevent their misery and destruction. St. Paul could wish himself *accused from Christ for his brethren and kinsmen, according to the flesh*, Rom. 9. 3. And what he suffered and did for his Brethren according to the Faith of Christ, appears as by his great Afflictions, so by his ready complacency in the case of Circumcising *Timothy*, *Acts* 16. 3. because of the *Jews* which were at *Lystra* and *Iconium*, though he were of a Persuasion that Christ could profit them nothing that were circumcised, seeing that such became debtors to do the whole Law. And *Acts* 21. 23. when St. James and the Elders informed him, that the *Jews* would be offended by his teaching them, that they ought not to Circumcise their Children, nor to walk after their Customs; he was persuaded, lest he should offend them, to purifie himself, and in the Company of others to go into the Temple, to shew that he kept the Law. From whence we learn, that it is our Duty to part with many Opinions of our own, not absolutely necessary to Salvation, for the propagation of the true Religion. I speak not this as if it were Lawful to do any evil that good may come of it, which the Apostle utterly condemns, but only on supposition that the late King hath rendred himself uncapable of the Government, and that the present King and Queen (considering the Circumstances wherein we were) are regularly advanced to the Government,

ment, that we ought to pay our Allegiance to them. The Question whether Humane Laws do bind the Conscience, is much discoursed of by Divines, who resolve, that they do not bind the Conscience immediately by their own Authority, but mediately by vertue of the Command of God, who enjoyns Obedience to the Higher Powers: But then if the matter of the Law be unjust, or if it be not for the Publick Good, which is the end of all Humane Laws, they are not Obligatory to Conscience; for the Rule for Conscience in things Political is the Publick welfare: So the Ancient *Roman Law*, *Salus Populi Suprema Lex*, which is the same with that of the Apostle, *He is the Minister of God to thee for good*, (*i. e.*) not for thy Private Good only, but for the Publick Good, attending continually on this very thing, (*i. e.*) the Publick Good, wherein thy Private Good is concerned; for the Laws do not respect this or that particular man's case, but the Common good; and good Laws may be grievous to this or that particular Man in some cases, which yet highly conduce to the Publick Welfare, and better is a private Inconvenience than a publick Mischief. Those Laws therefore that tend most to the Publick welfare, are the Rule of Conscience in Political Affairs. And for the same Reason that when a Magistrate makes a Law against God's Law in Religious Matters, it doth not bind the Conscience: For the same Reason, when a Magistrate makes a Law against the Publick welfare, it doth not bind the Conscience in Political Affairs: The Reason is, because the Magistrates Power is derived from God, and God hath limited and determined that Power for the Publick Good as its great end, and such Laws as are contrary to that end, have no Authority, nor do oblige the Conscience. It is truly said, that
some

some things are commanded, because they are good ; other things are good, because they are commanded : Now our Obedience to Governors is good, because it is commanded ; but a respect to the Publick welfare in all Laws is commanded, because it is the chief good and end of Government, and so is Prior and Paramount to all Politick Laws ; and hence it is, that the Casuists do resolve, that Humane Laws do not bind the Conscience when things grievous and intolerable are commanded. But then the Question will be, Who shall judge whether the Laws made are conducing to the Publick Good or not, when not only the Magistrate, but the Representatives of the People have pre-judged it, and therefore past it into a Law ? *Ans.* There are few Laws, like those of the *Medes and Persians*, unalterable ; what was for the Publick Good at the time of making the Law, may afterward, on the alteration of Times and Accidents, prove to be otherwise ; and when the Reason of a Law ceaseth, the Obligation of it ceaseth also as to Conscience. There was a Law made against the use of that pernicious Weed of *Hops* (as the Law termeth it) because it was thought prejudicial to the Health of the Subject ; and though the Reason of the Law might be good as to some particular Men, yet long Experience taught, that the use of *Hops* was more beneficial to the Publick ; and therefore though that Law was not repealed, yet the use of *Hops* was continued. Now the Question is, whether such Brewers as continued the use of *Hops* against the Statute, did sin or not in so doing ? If they did not sin, it was because their Consciences were not obliged by that Law ; if they did sin, then the breach of a mistaken and erroneous Law is a sin, and damnable, which is a very hard Sentence.

But Secondly, Although the greater part of the People with their Legislators may judge the Laws made to be for the Common good, yet every Man must judge of his own Actions, in reference to those Laws, whether they be agreeable to the Common good or no, for the greater number in Councils may err, there is no Infallible Judge in Civil or Religious matters: If then the Law-givers may err, or my Conscience tells me that they do err, I am not bound to do what they Command by a blind Obedience, but to use my private discretion, in enquiring whether the thing enjoined be for the Publick good or not; for if I am allowed to use the judgment of my private discretion in Religious matters, why not in Civil? Men are not to go as Beasts where they are driven, much less to act contrary to their Reason and Judgment, which makes them worse than Beasts, who will follow their Senses unless they are hindred by force; so that I am not bound to obey a Law meerly Humane for Conscience-sake, when I judge that Law contrary to the Publick welfare, but I must submit to the Penalty, if I cannot honestly avoid it. But if a Magistrate that is obliged to govern by Laws, do resolutely set himself to destroy those Laws, and ruin not only the generality of his Subjects, but his own Crown and Dignity, we are not bound in Conscience to obey such a Magistrate, because of a prior Obligation to preserve the publick welfare, which was the end of Government, and to which the means are subordinate. It now remains, that having proved that Scripture and right Reason to be the Rule of Conscience for our Obedience both to Magistrates and their Laws *in foro interno*, that I do also prove, that a respect to the Publick good (not being contrary to any Law of God) is our Rule for Obedience, *in foro externo*.

One chief Law imprinted by God on the Reason of Mankind, is the conservation of it self, and for that end, *vim vi repellere*, to repel Force by Force, for which end Mankind were taught to live in Societies, and establish Rules and Laws for the Common Safety; therefore *homines conspirantes in communem utilitatem*, are the Subject-matter of a Common-wealth, this being the end of all Societies; no Civil Constitution can annul this Bond of Nature: So *Panormitan*, *Quando jus Civile aliquid disponit contra jus naturæ standum est Juri naturæ*. So also when the Law makes provision for such things as the Law-givers fore-see, and afterwards some things happen which could not be fore-seen, and new Reasons and Accidents appear contrary to those Laws, here Nature, as a common Parent and Protector of Justice and Necessity, alters or adds to the Law; as when *Sextus Tarquinius* ravished *Lucretia*, though there were no established Law against that particular sin, yet Nature it self directed a severe Punishment: And when the *Pharisees* pleaded their Vows to the *Corban*, in bar to relief of their Parents, which is a Law of Nature, our Saviour pronounced such Vows null. Bishop Taylor, p. 296. proves, *That the Law of Nature cannot be dispensed with by any Humane Power*: 1. Because God is the Author of it. 2. Because this Law of the preservation of the Common welfare is as necessary to the support of Societies, as Nourishment is for the support of their Bodies. 3. Because Natural Laws are the dictates of Natural Reason; and no man hath power to alter Reason, which is an Image of the Divine Wisdom, and therefore unalterable. As to the Law part, the *Act II Hen. 7. c. 1.* says, *That it is not reasonable, but against all Laws, Reason, and good Conscience, that Subjects going in War with their Sovereign Lord (for the time being) should*

lose or forfeit any thing for doing their Duty and Service of Allegiance; and it was Enacted, *That from thenceforth no Person attending on the King for the time being, and doing him true and faithful Service of Allegiance in his Wars, should in no wise be convicted or attainted of High Treason, nor of other Offence for that cause, but so be for that Service utterly discharged of any vexation, trouble, or loss.* The Lord Bacon, p. 144. of his History of Henry VII. gives a Reason of this Law; *For that it was agreeable (saith he) to reason of State, that the Subject should not enquire of the justness of the King's Title or Quarrel; and it was agreeable to good Conscience, that whatever the Fortune of the War were, the Subject should not suffer for his Obedience.* The Spirit of this Law was wonderful Pious and Noble, being like in matter of War to the Spirit of David, in matter of Plague; who said, *If I have sinned, strike me, but what have these Sheep done?* Neither wanted this Law parts of prudent and deep fore-sight, for it did the better take away occasion for the People to busie themselves to pry into the King's Title, for that however it fell, their Safety was provided for. Besides, it could not but greatly draw unto him the love and hearts of the People, because he seemed more careful for them than for himself.

The Lord Cook, p. 7. in the Third Book of Institutes, on the word *Le Roy*, speaking of Treason, says, *That the Act for Treason is to be understood of a King in possession of the Crown and Kingdom, for if there be a King regnant in possession, although he be Rex de facto only, and not de Jure, yet is he King within the purview of this Statute.* And the other that hath Right, and is out of possession, is not within this Statute. And if Treason be committed against a King *de facto*, and not *de*

de jure, and after the King *de jure* cometh to the Crown, he shall punish the Treason against the King *de facto*; and a Pardon granted by the King *de jure*, that is not also King *de facto*, is void. It is the Opinion of all Lawyers, that *in rebus dubiis melior est conditio possidentis*. Judge *Hales* gives the same sense of that Statute, in his Remarks on the Pleas of the Crown, Chapter of Treason.

Now both these were great Lawyers, and wrote under such as were Kings *de jure*, and in peaceable times. The Argument then is this: If Treason may be committed against a King in possession, or *de facto*, and not against the King *de jure*, being out of the possession, then I owe Allegiance to the King in possession, and not to the King out of possession, though King *de jure*. The Rule of the Law is this, I owe Allegiance to him that gives me Protection, whether I live at home under a King *de facto*, or live as a Stranger abroad under one that is a King *de jure*. I owe Allegiance unto each while I am under their Protection; for thus in *Calvin's Case*, Seventh Book of *Cook's Reports*; one *Shirly* a French-man, and some Subjects of the King of Portugal, having conspired with *Lopez* for the death of the Queen, were indicted for acting *contra Legiantie sue debitum*, against their due Allegiance, and were found Guilty, and Executed. And this the Law calls a local Allegiance. When Cities and Souldiers are taken in War, they may, to preserve their Lives, swear to the Conqueror never to bear Arms against him; by which Oath the condition of their former Prince is no way made worse; for had they refused such an Oath, they should have lost their Lives, which by this means being preserved, they may be in a condition to serve their Prince in any thing else but in fighting against him who

who spared his Life. Besides it is well known, that many good and wholesome Laws were made by such as were Kings only *de facto*, not *de jure*, which are still in force with us as they were with the Subjects that lived in their several Reigns; whence it follows, that we owe and ought to yield Allegiance to the King *de facto*, and observe his Laws, and to Pray for him as King. On the Deposing of *Richard* the Second, in a Provincial Synod in *Canterbury* under *Henry* the Fourth, whose Title was only *de facto*, it was decreed, that Prayers should be made *pro ipsius & Regni salute*, as he had desired. And *Arundel*, then Arch-Bishop of *Canterbury*, tells the King, that the Clergy did *pugnare precibus & sacrificiis apud deum pro victoriis ei obtinendis*. *Æthelwolve*, Anno 854. was made King while his elder Brother was living, yet *Elston* and *Swithon*, Bishops, prayed solemnly for him: So the Bishops prayed for *Will. Rufus*, his elder Brother living. *St. Anselme* also, though banished by *Henry* the First, did him Homage, and prayed for him. And although our five first Kings, beginning at *William* the Conqueror, came irregularly to the Crown: The first by Conquest, the second and third while their elder Brother lived, the fourth reigned when his Predecessor had a Daughter living, which was *Maude* the Empress; the fifth while his Mother, the right Heir, was living, yet were the stated Forms of Prayers still continued in the Ancient Missals respectively.

Nor can we well be excessive in our deference to those who under God have been the chief Instruments of the Common Safety; for if the Law of Nature, which obligeth every particular person to self-preservation, and much more to the preservation of the Publick Welfare, (in which case we may *vim in repellere*) be prior

prior and paramount to any subsequent Law of a more private concern, we of this Nation, which were so near to destruction, had all reason imaginable, to secure our selves against such violent and illegal attempts as were made, not only against our selves, but against the whole Protestant interest throughout all *Europe*, having such dreadful instances of Persecution in the neighbouring Nations of *France* and *Piedmont*; for the Question is not, whether we should chuse Sin rather than Affliction, in which case the Apostle hath determined, *that we may not do evil, that good may come of it*; but whether of two temporal evils, the least is to be chosen, or whether, when we are left without a Governor, we should set a Bramble over us, to rent and tare our flesh, or the healing Olive, under whose branches we might set down in peace and security. It is very observable, what God says concerning *Jeboiakim* the wicked Son (of a good Father) *Josiah*, *Jer. 22. 15. Shalt thou reign, because thou clovest thy self in Cedar? did not thy Father eat and drink and do justice and judgment, and then it was well with him? But thine eyes and thy heart are not but for thy covetousness to shed innocent blood, and for oppression and violence to do it, therefore thus saith the Lord concerning Jeboiakim, the son of Josiah King of Judah, they shall not lament for him, saying, Ah Lord, or, Ah his Glory.*

I shall therefore leave it to the serious consideration of my Brethren, whether it be more eligible, to pray for them in our Liturgy, who have preserved us in the free use of it, or for such as would have taken it from us, and imposed the Mass-book and Legends, instead of that and the Scriptures, by which we should have been reduced to this *dilemma*, either we must obey, to the violation of our Conscience, or, for our disobedience,

ence, we and our Families must be utterly destroyed.

If yet upon consideration of what hath been here said, and what our own judgments may add, we are still in *æquilibrio*, and do doubt to whom the Title of the Crown doth of right belong. I doubt not but the Law of Charity to our selves, our Families, and love to the Protestant Religion, may be of great weight to turn the Scales, and warrant our resolution in a case so doubtful.

Bishop Sanderſon, *Prælect.* 5. p. 176. puts this Question, *When any one takes the Government on him, having by force driven out the lawful Prince, or so streightned him, that he cannot pursue his right, which is invaded, not on a doubtful right, but by manifest wrong. what shall a good Subject, that hath sworn Allegiance to the oppressed Prince, do in this Case?* His Answer is, *It seems to me, that it is not only lawful for a good Subject to obey the Laws of the Prince in being, and to do what he is commanded, modo non sit factu turpe aut injustum, if the thing be not in it self evil or unjust. But also, that if the condition of humane affairs require it, there may be a necessity of obeying, or he may be judged to fail of his duty;* and whereas he had said, that Laws made by him that wanted lawful power, did not bind in Conscience, he answers, *that these things are not repugnant, because though the Subject be bound to do what the Law requires, yet he is not bound to that Law, but to himself and his Country. The Obligation is annexed to the Law that concerns himself and is truly a Law, which he thus explains: Seeing it is the duty of a pious and prudent man, to consider not only what is lawful, but what becomes him, and may be expedient to others, a good Subject may be bound to do that for the welfare of himself and fellow subjects, to which by Law he is not bound, which obligation ariseth from the duty he*
oweth

oweth to himself and to his Country, that Wars and Rapines may be prevented, and we may live peaceable under them, without violating the Faith we owe to the rightful Heir. But then he raiseth the Question, Seeing no man can serve two Masters, especially of contrary interest, how can we please the one, without displeasing the other? His Answer is, It may be presumed, that the rightful Prince will consent, because the Subject herein doth not so much serve the Possessor as the Common-wealth, the safety whereof no less concerns the injured Prince, than the present Possessor, and probably more, for as the true Mother of the Child had greater tenderness of its life than the pretended Mother, so the true Prince may be presumed to have a greater regard to the welfare of the People, than the Usurper.

Claudian to Honorius.

*Tu civem patremq; geris tu consule cunctis
Non tibi, nec sua te moveant sed publica vota.*

As a Mariner is supposed to intend the guiding of his Ship to a safe Harbor, and a Physician to intend the Health of his Patient, so is a Prince presumed to intend the prosperity of his People, which is the great end of Government.

Bishop Bilson goes farther; speaking of the Roman Cruelties, says, *They are such as are able to set good men at their wits end, and make them justly doubt, since you refuse the course of all good Laws, Divine and Humane, whether by the Law of Nature they may not defend themselves against such barbarous blood-suckers.* For whatever is attempted on us without Law, is force, and we may, *vim vi repellere*, as in the case of a Sheriff taking possession

possession on a Judgment; if a Prince should commission armed men to oppose him in the execution of his Office, he may lawfully resist them, and the Law doth indemnifie him; the Princes Private Will cannot make void his Publick Will, formerly declared and published in his Laws.

This hath been the fence and practice of our own and other Protestant Nations; of our own in the Case of the Queen of Scots, who brought *French Forces* into *Scotland*, to withstand the Reformation, endeavoured by the Nobles: the Clergy of *England* gave a Subsidy of 6 s. in the Pound, to defray the Charge of that War, and call it, her using all prudent and Godly means; 5 *Eliz. ch. 24.* & *ch. 27.* The Temporality call it, *The princely and upright preservation of the Liberty of the Realm and Nation of Scotland from amineous Captivity and Desolation.* And for abating Hostility and Persecution within the Realm of *France*, there were Forces sent under the Earl of *Warwick* to *New-haven*, to assist the *French* Protestants, which was then accounted a Godly and prudent means to abate Hostility and Persecution, praised against the Professors of God's Holy Gospel. And in the 35 of *Eliz. ch. 12.* was another Subsidy granted by the Clergy for the Queen's Charges, in the prudent and needful prevention of such Attempts as tended to the Extirpation of the sincere Profession of the Gospel both here and elsewhere. Add *Ch. 13.* the Temporality gave this Reason for their Subsidy: *Besides the great and perpetual Honour which it hath pleased God to give your Majesty abroad, in making you the principal Support of all Just and Religious Causes against Usurpers, besides the great Succours in France and Flanders, which*

we conceive to be most Honourable in regard of the ancient League, the Justice and Equity of the Cause, &c. And in 39 Eliz. ch. 27. they say, This Land is become, since your Majesty's days, both a Port and Haven of Refuge for distressed States and Kingdoms; and a Rock and Bulwark of Opposition against the Tyranny and ambitious Attempts of mighty Usurping Potentates. And in 43 Eliz. ch. 17. The Clergy say, Who hath, or should have a livelier sense or better remembrance of your Majesty's Princely Courage and Constancy in advancing and protesting the free Profession of the Gospel within and without your Majesty's Dominions, than your Clergy? And we cannot doubt but they would have acted the same thing for their own Preservation, which they approved and encouraged others to do.

The Protestants of Saxony and Lantgrave, being seven Princes, and Twenty four Cities, declare, That the Emperor was reciprocally bound to them as they to him; and that he had dissolved their Obligation of Allegiance by casting them out of their Possessions, and endeavouring to destroy their Religion, which unjust Attempts have not God for their Author. Nor are we otherwise bound to Caesar than on his performing the Conditions on which he was created Caesar, Sleidan, lib. 18. The Magdeburg Divines affirm the same, Sleidan, l. 22. Where the Laws and Constitutions of a Government allow of a defence, the Gospel doth so too, for it doth not alter the Laws of a State; which may be an Answer to what is urged from Rom. 13. for the Obligation of all Subjects is such, as the Laws under which they live do require. The Oath of the Subjects of the King of Poland hath this *Salvo* in the Oath of the King; *Quod si Sacramentum manu violavero inchoe Regni mei nullam vobis obedientiam prestare debentur.* In Richard the Second's time, the Parliament declared in a Statute of Praemunire, That the Crown of England hath

been so free (i. e.) from the Incroachments of the Pope) at all times; that it hath been in no Earthly Subjection; but immediately subject to God in all things touching the Regality of the Crown; and God defend (say they) that it should be submitted to the Pope; and the Laws and Statutes of the Realm be by him defeated and avoided at his pleasure in perpetual destruction of the Sovereignty of the King, his Crown and Dignity, and of all the Realm; and therefore they declare, That they and all the Leige Commons of the Realm will stand with their Lord the King and his Crown and Regality in the cases aforesaid. (viz. purchasing of Bulls from Rome, executing Judgments given in that Court, Translating of Bishops, &c.) and in all other cases attempted against him, and his Crown, and Regality, in all points to live and to dye. And they pray the King, and him require by way of Justice, to Examine all the Lords in Parliament, as well Spiritual as Temporal, severally, and all the Estates of the Parliament, how they think of the causes aforesaid, which be so openly against the King's Crown, and in derogation of his Regality, and how they will stand with the King in upholding the Rights of the said Crown and Dignity. And we find by a Letter of King John's to the Pope, That if the King would, yet the Barons would not submit to King or Pope in those cases. How contrary to this Statute of *Præmunire* did they act, that instead of a strict enquiry after such as endeavoured to subject the Nation to the Usurpations of Rome, did closely and particularly examine both Lords and Commons, whether they would submit to the introducing that Usurpation, and upon their Refusal, were presently discharged of their respective Offices, and excluded from the Prince's favour: Was not this to subvert a *Fundamental Constitution of the Government*? And by that Act, to incur a *Præmunire. Carpentarius*, an approved Author, *de Capital. Casarea*, says, c. 1. p. 15.

There

There is no King or Supreme Prince in the Christian World; whose Power some certain Compact made with the several Orders of the People, may not restrain and limit, and which are not bound by the Capitulation. Reinkinck says the same of the Emperor, de Reg. Secul. l. 1. Class. 3. p. 76. That Cæsar the Head of the Empire, is bound by the Laws; and how should the King of England be above all the Christian Kings? It was too much for him to aspire to be like the most Christian King Henry the First acknowledged, That if he would (submit to the Pope) his Nobles would not permit it. And the Lords and Commons under Edward the First, signified to the Pope (concerning his claim to Scotland) that they neither ought nor would permit it, although the King should attempt it. And under Henry the Third, it is recorded; That if the King and Nobles should agree to it, yet the Commons would not permit the entrance of Adomer, the Pope's Legate, into England. Bodmin, treating of the King of France (says) Principem contra leges nil posse, & rescriptis ejus nullam rationem haberi debere nisi æquitate perinde & veritati consentanea sint. Bracton, of the King of England, says, Rex est sub lege quia Lex facit Regem. This Bracton, who lived in the Reign of Henry the Third, was of the judgment. That the Barons had a power to restrain the Kings Exorbitances, lib. 3. ch. 26. Rex habet superiorem deum item legem per quam factus est Rex, item Curiam suam (viz.) Comites & Barones suos. The Barons proceeded in their Wars on this Principle, That they had a power to restrain their Kings from subverting the Laws and Religion established. And what Opinion the Religious Men of that Time had of those Wars, may appear by the Opinion that the Chronicle of Mailros had of Simon of Monfort, of which I have spoken before. This may suffice to resolve the Conscience in respect of the Law.

Thus

Thus have I given an Account of the Judgment of many learned Men concerning the *Queries* proposed. How far they may prevail with others I cannot presage. But I plainly perceive, that many very learned and good Men are yet of another Opinion; and indeed there are many very difficult Arguments, both from Scripture and Laws, which by the several Interpretations given of them by learned Men of this and former Ages, may confirm them in their prejudices. Therefore my humble Request to them that are yet unsatisfied, is, That laying aside all Prejudices, they would maturely consider of the Arguments *Pro* and *Con*, and after diligent Enquiry, and hearty Prayers, follow the dictates of a well-informed Conscience,

--- *Si quid novisti rectius istis,
Candidus imperti: si non his utere mecum.*

In the mean time let the Apostle's Rule be observed by the Parties of different Persuasions; *Rom. 14. 1, &c.* which he gives in the Chapter immediately after the Rules for Obedience; *Him that is weak in the faith, receive, but not to doubtful disputations, for one believeth that he may eat all things; another, who is weak, eateth herbs. Let not him that eateth despise him that eateth not: And let not him that eateth not despise him that eateth. Who art thou that judgest another mans servant? Let every man be fully persuaded in his own mind.*

POSTSCRIPT.

THE Arguments that have been proposed, may prevail with some persons to alter their Judgements concerning their Obligations to the late King, and if so, they will be sensible of the necessity of transferring their Duty to the Established Government, which they may do with all cheerfulness and confidence of Acceptation and Favour: for their present Majesties cannot but judge, that they who were so conscientiously Dutiful to the late King, while he kept his Station among them, tho' he industriously sought to Ruine them as to their Civil and Religious Interests, and were doubtful how they might Desert him when he had abandoned and deserted them; I say, they cannot but judge, upon their ingaging to be true and faithful to them who have redeemed them from Slavery and Popery, and have adventured all their Substance, and their very Lives, that they might secure to them their Laws, Liberties and Religion; which doubtless they will make their chief business, because it is their interest so to do.

As to such who having weighed these Arguments, are yet in Equilibrio, and doubt whether the late King or their present Majesties have the better right; in such a case a man is to act according to his reason and discretion; and then tho' he may be mistaken, yet his mistake is pardonable; now his discretion will teach him to recollect all the inconveniences and Miseries that will most probably follow on his refusal to submit to the present Government; if he still adhere to the interest of the late King, and be should prove successful, then in all probability he will entail Popery and Slavery, not only on himself and Family, but on the whole Nation for succeeding Ages, and on the Protestant Nations throughout all Europe; whereas if he live in due Obedience to the Established Government; in conjunction with the

Body

Body of the Nation, and study to be quiet, and to do his own business, following Peace and Holiness, all these Evils may be prevented, and the Lord will bless our Sion, and we may see the good of Jerusalem all the days of our Life; yea, we may see our childrens children, and peace upon all the Israel of GOD. These Considerations ought to turn the Scales which hung in equal ballance before. To such a doubting person I shall propose this Case; Suppose a person that hath been given to Quarrels and Brawls found dead, and some wounds and bruises found by Inquest on his body, whereby it is presumed that he was murdered, and a Neighbour of his, a person of a sober and peaceable conversation, being known to have been in his company near the time and place where he was found dead, is arraigned for the Murder, but no Evidence of the matter of Fact produced against him, only some probable Circumstances, the question is, whether a Jury man that hath only some Circumstances to guide him in his Verdict, may find such a person Guilty of that Murder, which if he do, he may draw the Guilt of shedding Innocent Blood on himself, and undo a Neighbour's Family; I think an Ignoramus would be more justifiable than a Sentence of Guilt. Where the case is dubious, we should choose that part which infers the least danger, in case we should err, as Aristotle says, and thence he concludes, It is much better to Absolve the Guilty, than to Condemn the Innocent. And, *Minus malum rationem induit boni. In rebus dubiis pars tutior eligenda.* I know that Bishop Sanderson in his Judicium, Ox. p. 44. hath determined, That when a King is hindered from protecting his People, (*Culpa non sua sed aliena nec voluntaris defectu sed potestatis.*) for want of Power, we are not freed from our Allegiance, but in case there is not only a defect of Power to protect us, but a plain declaration of a Will to destroy us, this will plainly overthrow that determination, as the Bishop himself hath in other of his Writings done: U

bi desunt judicia incipit bellum. And it is to be considered, that the Bishop wrote this in the Case of Charles the First, from which this of James the Second differs toto cælo.

To those that are not yet reconciled to the now Established Government, I shall offer these Considerations :

First, Whether the present King had not a just cause for Invading the Kingdom. Secondly, Whether having Invaded it, and obtained a full and peaceable Possession by a general consent of the People, he hath obtained a rightful Title. The Causes that do justify the Invasion are these : 1. The Vindication of his Lady's Title, which was in a manner endeavoured to be ravished from her by a Prince whose Birth was so much suspected, and whereof the Nation was so generally convinced. 2. The Invitation of the Subjects, Lords Spiritual and Temporal, with many Commons, groaning under an Arbitrary Power, Popery and Slavery, for which cause many Lords and Commons had left the Kingdom, and sought protection from the present King, and came in with him. 3. The present King was made the Head of the Protestant Party by those Princes who undertook the Defence of the Reformed Religion against the Popish Princes that had confederated to root it out ; and a better method could not be taken, than to begin with England ; where, if the designs for Popery had succeeded, the Protestant Cause had been almost desperate, which is now in a hopeful way of Establishment : These Causes are so sufficient to justify the Invasion, that I think no good Protestant will doubt of them ; and as little doubt can be made of the second Consideration, that he who on such just Grounds Invades a Kingdom, and having gotten a full and quiet Possession, is by the general Consent of the People accepted and declared their King, hath a lawful Right and Title, for first, Ubi desinunt judicia incipit bellum ; and as Law Suits, so War, may be waged for prevention of Injuri-

ries not yet done; As Livy says, *Iustum est bellum quod necessarium est & pia Arma quibus nulla nisi in armis relinquatur spes*; When it is manifest our sitting still will make our Condition worse, we may adventure on the danger of War. The War was begun by the French King and his Confederates against the Prince; England was like to be in the Confederacy by what the King acted and endeavoured against the Protestant Religion: And, *Tunc tua res Agitur.*

This is the first Cause that Justifies the War on the present King's part; the second Cause is, the Recovery of the Right which his Lady and himself had to the Succession, which was in a manner taken from them; Grotius de Jure Belli, l. 2. c. 1. sect. 2. De rebus repetendis, proves this at large in a considerable Paragraph to which I refer the Reader: And of this I shall give but one or two Instances among many in the Scriptures. Abraham's War on the King of Elam who had spoiled Sodom, was just, Gen. 14. And so were the Wars of Israel against the Assyrians and other Nations that invaded their Dominion, and would have kept them from them, of this there can be no doubt; nor can, secondly, the Vindication of a People oppressed by their Prince, against the Laws of God and the Land; if a Father seek the destruction of an innocent person, his Son may piously restrain his Father from that act which would not only ruine the innocent in this World, but himself in the World to come. So that this War for the asserting the Title of the Prince and Princess to the Crown, and for the defence of our Religion, against the Confederacy of Popish Princes to extirpate it, (which is matter of Fact) may appear most Just; for tho' Religion may not be propagated by Arms, yet it may be defended where it is established by Law, against foreign Powers that conspire the destruction of it: Grotius l. 2. c. 25. n. 4. approves a War on behalf of Confederates, For he that doth not repel an Injury from his

his Confederates if he can, is as much in fault as he that doth the Injury. *He commends Constantine for making War on Maxentius and Licinius who persecuted such of their Subjects as were Christians, only for their Religion.*

Grotius l. 2. c. 20. n. 39. Injuries begun only, are not to be vindicated by Arms, unless the matter be both very weighty, and be already proceeded so far, that from what is already done, either a certain mischief, tho' not yet what was intended, hath already befallen, or some extraordinary danger do threaten thereby. If an Enemy hath once assaulted me, and comes armed with a resolution to kill me, I am not to tarry till he comes within reach of me, and receive his Weapons upon my naked breast, but seasonably to prevent him.

And l. 2. c. 25. n. 8. Those Princes who are free, may make War for themselves or others: And tho' we should grant, that Subjects might not take Arms for their own Defence against their Prince, no not in case of greatest necessity, (*which yet is doubted even by those whose purpose it was to defend Regal Power*) yet it follows not, that other Princes may not take Arms in their defence; that which is unlawful for one to do for himself, by reason of a personal impediment, may be lawful for another to do for him.

As in Affairs of the Church the Bishops are said to take on them the care of the Universal Church, so beside the care of their particular Dominions, Kings assume the general care of Humane Societies. Seneca resolves, Bello a me peti potest qui a mea gente sepositus suam exagitat. And Cicero, That War should be undertaken only that we may live in Peace; and not be injured.

It will be objected, That God will take care of our Religion, Deorum injuriæ diis curæ & perjurium satis habet deum ultorem.

Answer, *So it may be said of other Sins which God will*
 I 2 *punish.*

punish, yet the Laws are justly executed on the Offenders by the Magistrate, as all grant.

And if it be objected, That such Offences are punished not so much as committed against God, as for the damage done to men.

Ans. It is observed, that not only such Offences are punished by men, as are directly committed against other men, but such as by consequence may be prejudicial to others, as Self-murder, Sodomy, &c. for tho' the principal end be to procure God's favour, (by punishing such Crimes) yet it is done also to prevent the influence and notable effects on Humane Societies. See l. 2. c. 20. n. 44.

It may be farther objected, That if we wholly forsake the King, we shall justifie the Rebellion against King Charles the First, who was charged with designs of bringing in Popery and Arbitrary Government, Illegal Impositions, Evil Counsellors, &c.

Ans. I suppose the Objectors that are so tender of committing any act of Disloyalty against King James the Second, will by no means approve of what was done against King Charles the First; but they are afraid of the reproach and scandal, as if they did allow of that by doing the like. But the Case is extremely different, the one King being a well-resolved Protestant, the other a seduced Papist; Charles the First gave as great assurances of his constancy in the Protestant Religion, by taking the Holy Sacrament publicly, and purposely for the satisfaction of his Subjects, by disputing for it against Papists, by charging his Children against it a little before his death, and even then giving a full Testimony of dying in it: But James the Second, contrary to his Education, and his Royal Father's Charge, deserted that Religion, espoused Popery, and resolved to introduce it to his Kingdom, which he deserted rather then he would forego that design: His Father lost his life to preserve the Church and the Established Religion, which King James industriously sought to destroy, and in fact
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he had destroyed the Government Established before he deserted the Kingdom. 2ly, There was a great disparity in their actions; tho' Charles the First was unhappily forced from the full Administration of the Government, and Protection of his Loyal Subjects, yet he kept within the Kingdom, and endeavoured to assert his and his Peoples Rights, not by the Sword only, but by many Treaties and gracious Condescensions, such as satisfied all sober persons even among his Adversaries, as by their too late Votes on that behalf appeared: He did not declare that he was Absolute, and expected Obedience to his Commands, without any Reserve; he did not Imprison his Bishops only for Petitioning in a matter of Conscience, as James the Second, and the Enemies of Charles the First did; Fears and Jealousies, or very light Impositions on the People for urgent Necessities, were made the Ground of the War against Charles the First; but real and intollerable Grievances, such as the Subjects could not bear, nor knew how to remove. 3ly, There is a great disparity in the adverse Parties, Charles the First was opposed by his Subjects, James the Second by a free Prince to assert a just Right; the better part of Charles the First's Subjects adhered to him, and dyed for him, and at length the whole body of the Nation being convinced of the Injustice of the War, recalled Charles the Second to succeed his Father: And I hope no man will compare the Benefits we have received by the present King's proceedings, with the Mischiefs that we endured, and expected greater not only from the Usurpers on Charles the First, but the transactions of James the Second. And such persons do as surely deserve, as they will draw on themselves that Popery and Slavery which they abhor, who are not satisfied with that happy Deliverance which they now enjoy, and by their Thankfulness and Obedience to God and the King, may be confirmed to them and their Posterity; so that I am well persuaded, that they who engaged against Charles the First, were highly criminal, and that they who (since James the Second,

deserted the Kingdom) shall engage for him, are really peccant.

The second Consideration is, Whether the King having on these grounds begun a War, and gotten quiet possession of the Kingdom, and by the People (acknowledging the Right of his Lady to the Succession on the Vacancy by Desertion) are proclaimed King and Queen, have a just Title, and such as we ought to swear Allegiance to. As to the Vacancy of the Government, I have said enough already, and all will grant, that if a Crown be Forfeitable, ours was forfeited: Now in case of this Vacancy, the Right of Succession by our Laws is in the next Heir, which is the present Queen, and that she ought immediately to succeed, (because by a Maxim in our Laws, the King never dies) and the sole Administration is to be in her, and therefore it is objected, That we cannot swear Faith and true Allegiance to any other. Answ. Seeing all Oaths and Acts that oblige the Subjects are in the name of the Queen as well as of the King, we pay our Obedience where it is due; and this may satisfy the Conscience of every one, as to our present Condition at least, until there be a separation made. And if the sole Power should be devolved on the present King, the consent of the next Heir being obtained, to whom is the Injury done? Not to the Princess Anne, for *volenti non fit injuria*; not to the People for the same reason, they having expressed their consent; but this hath its Prejudice in the Case of Henry the Seventh, as is already said.

If in discussing the Right of Succession, a question do arise concerning the Primary Will and Intention of the People at the first Institution of a Kingdom, it is not amiss to take the Advice of the present People, (i. e.) of the Nobles, Clergy, and Commons, as Cambden says, of England, Anno 1571, 1572. Grotius l. 2. c. 7. n. 27. And the Equity of it seemeth apparent, that he who redeemed the Crown may wear it by consent of the People, and the consent of the right Heir; nor can the People be blamed for joyning in such consent, because it hath been

been thought a Duty in Gratitude, that such Heroes as have vindicated a People from Thralldom, and become great Benefactors to them, have been by consent of the People acknowledged their Kings. So Aristotle Polit. l. 3. c. 10. n. 89. And in such a juncture of Affairs, the whole Protestant Cause lying at Stake, the Kingdom of Ireland being possessed by Papists, and many Divisions in our own Nation, there is need of more than the Authority of a single person. The Act of 13 of Eliz. asserts it to be in the Power of the Parliament to alter or limit the Succession. And as to matter of fact, such alteration hath been made, for in the Cases of Queen Mary and Queen Elizabeth, the Succession was altered, because one of them was Illegitimate: Again, Quod fieri non debuit factum Valet; The necessity of Affairs that inforc'd it, may speak much in defence of it; As Josephus says of the Jews submitting to the Roman Emperours, That having submitted to them, they ought not to make resistance. And if by tract of time, an Empire which was unjustly acquired, may justly be submitted to, because of an implicate Consent of the People to such an Empire, I see no cause but the express actual Consent of a People, to a Prince, may justly oblige them. Such a Consent of the Senate and People to the Roman Emperours, was the ground of our Saviour's Injunction for paying Tribute, and of the Apostles requiring Subjection to them: And so we may conclude, as Hushai did, 2 Sam. 16. 18. Whom the LORD and this People, and all the Men of Israel shall choose, his will I be, and with him I will abide.

F I N I S.